

**All Saints' Academy, Cheltenham**

**DEED OF VARIATION OF FUNDING AGREEMENT  
2020**

The Parties to this Deed are:

(1) **The Secretary of State for Education** of Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the "**Secretary of State**");

- and -

(2) **All Saints' Academy, Cheltenham**, a charitable company incorporated in England and Wales with registered company number 06831538 whose registered address is at All Saints' Academy, Blaisdon Way, Cheltenham, Gloucestershire GL51 0WH (the "**Company**").

together referred to as the "**Parties**".

## **INTRODUCTION**

- A. The Parties entered into a funding agreement on 25 September 2009 as varied on 7 April 2010, a copy of which is contained in Schedule 1, (the "**Existing FA**") in connection with the opening of All Saints' Academy, Cheltenham on 1 September 2011.
- B. The Parties have agreed to amend and re-state the terms of the Existing FA on the terms set out in this Deed.

## **LEGAL AGREEMENT**

1. Words, expressions and interpretations used in this Deed shall, unless the context expressly requires otherwise, have the meaning given to them in, and shall be interpreted in accordance with, the Amended Master Funding Agreement (as defined in clause 2 below).
2. The Secretary of State and the Company agree that with effect from 1 September 2020, the Existing FA shall be amended and re-stated in the form of the Funding Agreement set out in Schedule 2 (the "**Amended Funding Agreement**"). For the avoidance of doubt, the Amended Funding Agreement does not terminate or suspend the Existing FA but amends and re-states it.

## **GOVERNING LAW AND JURISDICTION**

3. This Deed, and any dispute or claim arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.
4. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this deed or its subject matter or formation (including non-contractual disputes or claims).

## **COUNTERPARTS**

5. This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

**IN WITNESS** whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the last date listed below.

**EXECUTED** as a deed by affixing the corporate seal of the **Secretary of State for Education** authenticated by:-



Duly authorised by the Secretary of State for Education

Date 29th June 2020

**EXECUTED** as a deed by **All Saints' Academy, Cheltenham** acting by:



Director

Print name



Date .....

Witnessed

Full name

Address...

Occupation



**Schedule 1**

**Existing FA**

**FUNDING AGREEMENT**

25<sup>th</sup> September 2009

# **ALL SAINTS' ACADEMY, CHELTENHAM**

## **FUNDING AGREEMENT**

### **CONTENTS:**

<b>SECTION</b>	<b>CLAUSE NO</b>
<b>INTRODUCTION</b>	<b>1 – 10</b>
<b>LEGAL AGREEMENT</b>	<b>11</b>
<b>CHARACTERISTICS OF THE ACADEMY</b>	<b>12</b>
<b>CONDITIONS OF GRANT</b>	
General	13
Governance	14 - 15
Conduct	16
Pupil well being; Community Cohesion; and the Children & Young People Plan	17
Designated Teacher for Children in Care	18
School Development plan and target setting	19 - 21
Pupils	22
Teachers and other staff	23 – 28
14-19 Entitlement	29-33
Curriculum, curriculum development and delivery and RE and collective worship	34-42
Assessment	43-50
Crisis Management Plan	51
Exclusions Agreement	52
School meals	53-55
Charging	56
Provision of Information to parents and others	57-59B

### **GRANTS TO BE PAID BY THE SECRETARY OF STATE**

General	60-61
Capital Grant	62
Arrangement for Payment of Capital Grant	66
Implementation Grant	67-68D
General Annual Grant	69-81
Earmarked Annual Grant	82-83
Arrangements for payment of GAG and EAG	84-88
Other relevant funding	89-92
<b>FINANCIAL AND ACCOUNTING REQUIREMENTS</b>	
General	93 – 106
Borrowing Powers	107
Disposal of Assets	108 - 112
<b>TERMINATION</b>	
General	113-124
Effect of Termination	125-132
<b>GENERAL</b>	
Information	133-134
Access by Secretary of State's Officers	135-137
Notices	138-140
General	141
<b>ANNEXES TO AGREEMENT</b>	
Memorandum and Articles of the Academy Trust	Annex A
Admissions Requirements	Annex B
Arrangements for pupils with SEN and disabilities at each Academy	Annex C
Serious incidents of misbehaviour leading to fixed period Learning Behaviour policy (including discipline and or arrangements for fixed term and permanent exclusions and appeals against exclusions) for the Academy	Annex D



## INTRODUCTION

- 1) This Agreement is made under section 482 of the Education Act 1996, as substituted by the Education Act 2002, between the Secretary of State for Children, Schools and Families ("the Secretary of State") and All Saints' Academy, Cheltenham (the "Academy Trust").
- 2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered company number 06831538. The Academy Trust shall be registered as a charity by no later than the day before the date the Academy opens.
- 3) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
  - a) "Academies Financial Handbook" - clause 94;
  - b) "Academy Financial Year" - clause 88;
  - c) "Accounting Officer" - clause 93;
  - d) "annual letter of funding" - clause 87;
  - e) "Chief Inspector" means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;
  - f) "GAG" - clauses 61;
  - g) "Capital Expenditure" - clause 62;
  - h) "Capital Grant" - clause 62;
  - i) "EAG" - clause 61;
  - j) "Minimum Period" means a period determined according to the following table:

If at the time the Special Measures Notice is given the Academy shall have been opened for:	The Minimum Period will be
Less than 12 months	36 months



Less than 24 months but 12 months or more	24 months
24 months or more	12 months

k) "recurrent expenditure" – clause 61;

l) "School Development Plan" – clause 19;

m) "Start-up Period" – clause 77;

4) In this Agreement the following words and expressions shall have the following meanings:-

"Business Day" means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday with the meaning given to that expression in the Banking and Finance Dealings Act 1971;

"DCSF" means Department for Children, Schools and Families;

"Further Governors" means Governors who may be appointed by the Secretary of State under the Articles if a Special Measures Termination Event, as defined in this Agreement, occurs;

"LA" means the Local Authority in the area in which the Academy is situated;

"Memorandum" and "Articles" means the Memorandum and Articles of Association of the Academy Trust for the time being in force, a copy of the current version of which is annexed to this Agreement as Annex A;

"parents" means parents or guardians;

"persons" includes a body of persons, corporate or incorporate;

"Principal" means the head teacher of the Academy;

references to "school" shall where the context so admits be references to the Academy;

"SEN" means Special Educational Needs;

7) The Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament.

- 8) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement.
- 9) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Academy Trust.
- 10) Section 482 (1) of the Education Act 1996 as substituted by the Education Act 2002 states that -

- "(1) The Secretary of State may enter into an agreement with any person under which-
- a) that person undertakes to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England with the characteristics mentioned in subsection (2), and such other characteristics as are specified in the agreement, and
  - b) the Secretary of State agrees to make payments to that person in consideration of those undertakings."

#### **LEGAL AGREEMENT**

- 11) In consideration of the Academy Trust undertaking to establish and maintain, and to carry on or provide for the carrying on, an independent school to be known as the All Saints' Academy, Cheltenham, ("the Academy") and having such characteristics as are referred to in clause 12, the Secretary of State agrees to make payments to the Academy Trust in accordance with the conditions and requirements set out in this Agreement. For the avoidance of doubt, any obligations imposed upon or powers given to the Academy by this Agreement are also imposed upon the Academy Trust.

#### **CHARACTERISTICS OF THE ACADEMY**

- 12) The characteristics of the Academy set down in section 482 (2) of the Education Act 1996, as substituted by the Education Act 2002, are that the school:
  - a) has a broad curriculum with an emphasis on a particular subject area, or particular subject areas, specified in this Agreement; and
  - b) provides education for pupils of different abilities and who are wholly or mainly drawn from the area in which the school is situated.

## **CONDITIONS OF GRANT**

### **General**

13) Section 482(4) of the Education Act 1996 provides for the agreement to specify other conditions and requirements. These conditions in respect of the Academy are that:

- a) the school will be at the heart of its community, sharing facilities with other schools and the wider community;
- b) there will be assessment in the core subjects of the national curriculum at Key Stage 3, and the opportunity to study for external qualifications as defined by section 96 of the Learning and Skills Act 2000;
- c) the admissions policy and arrangements for the school will be in accordance with admissions law, and the DCSF Codes of Practice, as they apply to maintained schools;
- d) teachers will be required to have qualified teacher status; levels of pay and conditions of service for all employees will be the responsibility of the Academy Trust;
- e) there will be an emphasis on the needs of the individual pupils including pupils with special education needs (SEN), both those with and without statements of SEN;
- f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge;
- g) in no case shall the Academy be conducted in a way which would in the opinion of the Bishop be inimical to the welfare of the Church of England or in the opinion of the Ordinary be inimical to the welfare of the Roman Catholic Church.

### **Governance**

14) The Academy will be governed by a governing body ("the Governing Body") who are the Directors of the company constituted under the Memorandum and Articles of the Academy Trust. The Governing Body shall exercise its powers and functions with a view to fulfilling a largely strategic role in the running of the school and shall consider any advice given by the Principal. The Governing Body may exercise its powers and fulfil its functions through its servants or agents.

- 15) Subject to the Memorandum and Articles and this Agreement, the Governing Body may regulate its own procedure and that of any of its committees.

### **Conduct**

- 16) The Academy shall be conducted in accordance with:

- a) the Memorandum and Articles, which shall not be amended by the Academy Trust without the explicit consent of the Secretary of State, such consent not to be unreasonably withheld;
- b) all provisions by or under statute which confer rights or impose obligations on Academies including, without limitation, the independent schools standards prescribed under section 157 of the Education Act 2002 to the extent they apply to the Academy;
- c) the terms of this Agreement.

### **Pupil well-being; Community Cohesion; and the Children & Young People Plan**

- 17) In conducting the Academy and in providing community facilities the Academy Trust shall, so far as is reasonably practicable –

- a) promote the well-being of pupils at the Academy;
- b) promote community cohesion; and
- c) have regard to any plan published by the LA under section 17 of the Children Act 2004 or (where the LA is not required to publish such a plan) any plan published by the LA setting out their strategy in relation to children and relevant young people.

### **Designated Teacher for Children in Care**

- 18) The Academy Trust will in respect of the Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and with any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by an LA and are registered pupils at the school. For the purpose of this clause, any reference to the governing body of a



maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Governing Body of the Academy Trust.

### **School Development Plan and target setting**

- 19) The Academy Trust shall draw up a School Development Plan for the Academy each Academy Financial Year in accordance with a format and timetable to be advised by the Secretary of State. The School Development Plan shall, in particular:
- a) in accordance with a format and timetable to be advised by the Secretary of State, set out plans for ensuring that all pupils are supported to reach the highest standards of which they are capable; and
  - b) describe the Academy Trust's proposals for the Academy to work with other schools and with the wider community.
- 20) The Academy Trust shall in relation to the Academy set targets each Academy Financial Year in areas which are prescribed for maintained schools in regulations made by the Secretary of State under section 19 of the Education Act 1997 (or any statutory amendment or re-enactment of that section).
- 21) The Academy Trust shall consult the Secretary of State before setting these targets in respect of the Academy and shall take into account (but not be bound by) any comments received from the Secretary of State. The Academy Trust shall set its targets for the Academy in accordance with the timetable for target setting which applies to maintained schools.

### **Pupils**

- 22) The Academy will be an all ability and inclusive school. The arrangements for:
- a) the admission of pupils to the Academy together with the arrangements for making changes to such arrangements, including the requirement to secure the consent of the Secretary of State to such changes, such consent not to be unreasonably withheld or delayed, are set out in Annex B to this Agreement;
  - b) the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) (including the

appointment of a responsible person) together with the arrangements for making changes to such arrangements, including the requirement to secure the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, are set out in Annex C to this Agreement;

- c) pupil exclusions are set out in Annex D to this Agreement.

#### **Teachers and other staff**

23) Subject to clause 24, the Academy Trust shall not employ anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils ("specified work") who is not either:-

- a) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the General Teaching Council for England; or
- b) otherwise eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663), which for the purpose of this clause shall be construed as if the Academy were a maintained school.

24) Clause 23 and the requirement in clause 13(d) for teachers to have qualified teacher status do not apply to anyone who:

- a) was transferred to the employment of the Academy Trust by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- b) immediately prior to the transfer, was employed to do specified work; and
- c) immediately prior to the transfer, was not:
  - i) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the General Teaching Council for England, or
  - ii) eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663)

("transferred staff member"). The Academy Trust shall use its best endeavors to ensure that any transferred staff member who undertakes specified work and does not meet the requirements of either clause 23(a) or clause 23(b) meets such requirements as soon as possible.

- 25) The Academy Trust shall ensure that all teachers employed at the Academy have access to the Teachers Pension Scheme and, in so doing, will comply with the statutory provisions underlying the scheme.
- 26) The Academy Trust shall ensure that all employees at the Academy other than teachers have access to the Local Government Pension Scheme.
- 27) Reasonable notice shall be given to the Secretary of State of any meeting of the Governing Body or any committee or sub-committee thereof (including any interview or appointments panel), at which the appointment of a Principal is being considered and a representative of the Secretary of State shall be entitled to attend and speak at any such meeting whether or not they are also entitled to attend such meeting by virtue of clause 135 of this Agreement. Advice given by any such representative shall be taken into account by those persons considering the appointment of the Principal before a decision is made.
- 28) It shall be the responsibility of the Academy Trust to agree levels of pay and conditions of service with its employees, and to determine and employ such numbers of staff as may be appropriate. The Academy Trust shall approve policies for:
  - a) staffing structure, and staff remuneration
  - b) staff discipline and performance management.

#### **14-19 entitlement**

- 29) The Academy Trust shall make arrangements to ensure that, so far as reasonably practicable, a pupil at the Academy in the fourth key stage has the same curriculum entitlements as are conferred on such a pupil at a maintained school by section 85A(1) of the Education Act 2002.
- 30) The Academy Trust shall make arrangements to ensure that, so far as reasonably practicable, a course of study in the core subjects and a course of study in one of the entitlement areas is made available (whether at the Academy or otherwise) to any pupil at the Academy who is above compulsory school age.



31) Nothing in clauses 29 and 30-

- (a) requires the Academy Trust to incur disproportionate expenditure in making these arrangements;
- (b) confers any greater entitlements on a pupil than are conferred by section 85A (1) of the Education Act 2002 and section 3A of the Learning and Skills Act 2000.

32) In making arrangements under clauses 29-30 the Academy Trust shall have regard to any guidance issued from time to time by the Secretary of State or the Qualifications and Curriculum Authority.

33) For the purpose of clauses 29-30, "course of study", "core subjects" and "entitlement areas" have the same meaning as in sections 3A, 3B and 3C respectively of the Learning and Skills Act 2000.

#### **Curriculum, curriculum development and delivery and RE and collective worship**

34) The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced with an emphasis on science and sport.

35) The Academy Trust shall ensure that the National Curriculum programmes of study for English, Mathematics and Science and ICT for the time being prescribed by the Secretary of State under section 87 of the Education Act 2002 are taught so far as appropriate to any pupils admitted to the Academy in Years 1-11. In any event, the Academy Trust must ensure that such programmes of study have been covered in full at the Academy by the end of the final year of the Key Stage relevant for each Year group.

36) The Academy Trust shall ensure that if the Academy admits pupils in Years 1-6, the curriculum for these Years is sufficiently broad and has such depth as to enable such pupils to be adequately prepared for study at Key Stage 3 whether at the Academy or any other mainstream educational institution, including those institutions not sharing the Academy's specialism.

- 37) Despite clauses 35-36, the Academy Trust is not required to teach an individual pupil or group of pupils in one or more subjects where, in the opinion of the Principal, it is inappropriate to do so by reason of the pupil's or group's ability or attainment.
- 38) The Academy Trust shall make provision for the teaching of religious education and for a daily act of collective worship at the Academy.
- 39) Where the Academy is designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998:
- a) subject to clause 41, the Academy Trust shall ensure that provision is made for Religious Education to be given to all pupils at the Academy in accordance with a syllabus that has been approved by the Bishop and the Ordinary. This shall incorporate the specific tenets and teachings of the Church of England and the specific tenets and teachings of the Roman Catholic church, so as to ensure at all times that both are fully represented;
  - b) subject to clause 41, the Academy Trust shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with guidelines set out and agreed by both the Bishop and the Ordinary, provided that the specific tenets and teachings of both the Church of England and the Roman Catholic Church are incorporated in a meaningful way;
  - c) the Academy Trust shall ensure that the quality of Religious Education given to pupils at the Academy in accordance with the syllabus as set out in clause 39 (a), and the contents of the Academy's collective worship in accordance with the guidelines set out in clause 39 (b) above, are inspected under section 48 of the Education Act 2005. Such inspection shall be conducted by a person jointly chosen by the Bishop and Ordinary and the Academy Trust shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation of voluntary school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.
- 40) Where the Academy has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998:

- a) subject to clause 41, the Academy Trust shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375 (3) of the Education Act 1996 and paragraph 2 (5) of Schedule 19 to the School Standards and Framework Act 1998, and having regard to the requirements of the Qualifications and Curriculum Authority's national framework for religious education in schools;
  - b) subject to clause 41, the Academy Trust shall ensure that the Academy complies with the requirements of section 70 (1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.
- 41) Section 71(1) – (4) of the School Standards and Framework Act 1998 shall apply as if the Academy were a community, foundation or voluntary school, and as if references to "Religious Education" and to "Religious Worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clauses 39 or 40 as appropriate.
- 42) The Academy Trust shall have regard to any guidance issued by the Secretary of State on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children.

### **Assessment**

- 43) The Secretary of State will notify the National Assessment Agency (NAA) about the Academy.
- 44) The Academy Trust shall ensure that the pupils at the Academy take part at the end of Key Stage 3 in teacher assessments of pupil's performance in English, Maths, Science and ICT.
- 45) The Academy Trust shall report to the NAA and its agencies on the assessments required under clause 44 and shall provide the NAA with such information as the NAA may require in order for the requirements of clause 44 to be met.

- 46) In respect of all Key Stages, the Academy Trust will submit the Academy to monitoring and moderation of its assessment arrangements. The Academy Trust shall choose for the Academy to be monitored either:-
- a) by the LA, with the consent of that LA; or
  - b) by an Agency accredited by the NAA.
- 47) The Academy Trust shall notify the Secretary of State about the basis upon which it has chosen to have the Academy monitored, or any change to that choice. The NAA will conduct an annual audit of the monitoring arrangements.
- 48) The Academy Trust shall ensure that the Academy complies with the relevant provisions of the 'Assessment and Reporting Arrangements' as published from time to time by the Qualifications and Curriculum Authority, as they apply to maintained schools.
- 49) The results of any test or assessment conducted in accordance with clause 44 shall also be reported to the Secretary of State and/ or the LA as required and as set out in the 'Assessment and Reporting Arrangements', in a format approved by the Secretary of State.
- 50) The Academy Trust may not offer courses at the Academy which lead to external qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless the Secretary of State gives approval for such courses under section 98 of that Act.

#### **Crisis Management Plan**

- 51) Before the Academy opens to pupils it shall have in place a Crisis Management Plan setting out steps to be taken in the event of an emergency situation at the Academy.

#### **Exclusions Agreement**

- 52) From 1 April 2009, the Academy Trust shall, if invited to do so by an LA, enter into an agreement in respect of the Academy with that LA, which has the effect that where:
- a) the Academy Trust admits a pupil to the Academy who has been permanently excluded from a maintained school, the Academy itself or another Academy with whom the LA has a similar agreement; or
  - b) the Academy Trust permanently excludes a pupil from the Academy



payment will flow between the Academy Trust and the LA in the same direction and for the same amount that it would, were the Academy a maintained school, under Regulations made under section 47 of the School Standards and Framework Act 1998 relating to the addition or deduction of a maintained school's budget following a permanent exclusion or the admission of a permanently excluded pupil. At the date of this Agreement, the applicable Regulation is Regulation 23 of the School Finance (England) Regulations 2008.

### **School Meals**

- 53) The Academy Trust shall, if requested to do so by or on behalf of any pupils at the Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clauses 54 and 55 charges may be levied for lunches.
- 54) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Academy Trust shall ensure that a school lunch is provided for such a pupil free of charge.
- 55) All food and drink provided by or on behalf of the Academy shall comply with legislation governing the provision of food and drink in maintained schools as this applies from time to time. In particular, the Academy Trust shall ensure that school meals (breakfasts, lunches, or other meals) and food and drink available on the Academy's premises through other outlets such as tuck shops and vending machines comply with the relevant standards set out in regulations.

### **Charging**

- 56) Sections 402 (Obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours) and 460 (voluntary contributions), 461 (recovery of sums as civil debt) - 462 (Interpretation re charges) of the Education Act 1996 shall be deemed to apply to the Academy with the following modifications:
- a) references to any maintained school shall be treated as references to the Academy;
  - b) references to registered pupils shall be treated as references to registered pupils at the Academy;

- c) references to the governing body or the local education authority shall, in each case, be treated as references to the Academy Trust;
- d) the charging and remissions policies required to be determined under section 457, and any amendment thereto, shall require the approval of the Secretary of State; and
- e) the Academy Trust may charge persons who are not registered pupils at the Academy for education provided or for facilities used by them at the Academy.

#### **Provision of information to parents and others**

- 57) The Academy Trust shall publish a prospectus for the Academy annually. The Academy Trust shall send the prospectus free of charge to parents of pupils at the Academy and the Secretary of State, upon request. The Academy Trust shall also make the prospectus available for inspection by other persons at the Academy.
- 58) The prospectus for the Academy shall include details of admissions arrangements and, except insofar as such information is published in a document known as a School Profile which must accompany the prospectus, include the following information:
- a) details of the curriculum offered, of assessment arrangements and of the results of attainment tests and public examinations at school level, but this shall not include details of individual pupils' attainment and examination results;
  - b) the details of any religious affiliation of the school;
  - c) the policy on providing for children with SEN;
  - d) the arrangements for pupils with disabilities (as specified in Annex C to this Agreement);
  - e) the pupil absence rates;
  - f) the destination of school leavers;
  - g) any further information as set out in Schedule 3 of the Education (School Information) (England) Regulations 2002 (SI 2002/2897) as applies to maintained schools; and
  - h) such other information as the Academy Trust may determine.
- 59) The prospectus referred to in clauses 57-58 shall be published in the Academy Financial Year immediately preceding the Academy Financial Year to which it relates and shall be

published at least six weeks before the closing date for applying for a place at the Academy, provided always that, in the case of the first Academy Financial Year of the Academy, it is recognised that it might not be possible to publish the prospectus within this timeframe, in which case the prospectus shall be published before the opening of the Academy.

- 59A) The Secretary of State may provide to the LA the information which the Academy Trust has provided to the Secretary of State:
- a) under Schedules 2-5 to the Education (School Performance Information) (England) Regulations 2007 ; and
  - b) under paragraphs 1-3 of Part 3 to Schedule 1 to the Education (Information about Individual Pupils) (England) Regulations 2006.
- 59B) The Academy Trust shall ensure that all pupils at the Academy and their parents are informed via Fair Processing Notices that the pupils' personal data may be transferred in accordance with clause 59A.

## **GRANTS TO BE PAID BY THE SECRETARY OF STATE**

### **General**

- 60) The Secretary of State shall pay grants towards capital and recurrent expenditure for the Academy. Except with the Secretary of State's prior agreement, the Academy Trust shall not budget for its expenditure in any Academy Financial Year in excess of expected income. The Academy Trust shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which grant may be required. No decision by the Academy Trust shall commit the Secretary of State to paying any particular amount of grant.
- 61) "Recurrent expenditure" means any expenditure on the establishment, conduct, administration and maintenance of the Academy which does not fall within the categories of capital expenditure set out at clause 62. The Secretary of State shall pay two separate and distinct grants in respect of recurrent expenditure: General Annual Grant ("GAG") and Earmarked Annual Grant ("EAG").

### **Capital Grant**

- 62) "Capital Expenditure" means expenditure on:



- a) the acquisition of land and buildings;
- b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
- c) the installation of electrical, mechanical or other services;
- d) the purchase of vehicles and other self-propelled mechanical equipment;
- e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;
- f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;
- g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation;
- h) works of a permanent character other than the purchase or replacement of minor day-to day items;
- i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;
- j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of this Agreement;
- k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;
- l) VAT and other taxes payable on any of the above.

"Capital Grant" means grant paid to the Academy Trust in respect of Capital Expenditure.

- 63) Where the Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the Academy to open in such premises, the Secretary of State will be responsible for meeting the incurred Capital Expenditure for that Academy. To that end, he will provide funding to the LA in accordance with either

arrangements made under the Building Schools for the Future programme/ arrangements made under the BSF National Construction Contractors' Framework for Academies and Educational Facilities as the Secretary of State considers appropriate.

64) Any Capital Expenditure incurred in respect of the Academy on which Capital Grant payments are sought from the Secretary of State will require the specific prior written agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed.

65) Any payment of Capital Grant to the Academy Trust under this Agreement is subject to the fulfilment of the following conditions:

- a. such grants are used solely to defray expenditure approved by the Secretary of State;
- b. the Academy Trust certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure to be completed have been obtained or put in place.

#### **Arrangements for Payment of Capital Grant**

66) Capital Grant will be paid by the Secretary of State to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in the notified format with supporting invoices and certificates as required by the Secretary of State. Capital Grant will be paid within 21 days from the day on which a claim for grant is received if the claim is in the proper format, supported by the appropriate documentation and the conditions on its payment set out at clause 65 are complied with. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Academy Trust so much of the claim as shall not be in dispute.

#### **Implementation Grant**

67) "Implementation Grant" means payments towards recurrent expenditure incurred for the establishment of the Academy prior to its opening.

68) The Secretary of State may enter into an agreement with a third party ("Project Management Company") for the provision of project management services to assist in the establishment of the Academy. Where such an agreement has been entered into,

the Secretary of State shall pay Implementation Grant to the Project Management Company in accordance with that agreement.

68A) The Academy Trust shall prepare and submit to the Secretary of State a budget showing expected recurrent expenditure to be incurred by the Academy Trust before the Academy opens and for which grant is sought. This budget must either be agreed to or modified by the Secretary of State as he considers appropriate ("Approved Implementation Budget").

68B) Both parties recognise that as the project develops it may be necessary to revise individual costs in the Approved Implementation Budget and to move costs between budget headings in order to ensure that the project remains within its approved budget. Where the Academy Trust wishes to make such an adjustment of over £10,000, the reason for the change and a revised budget must be submitted to the Secretary of State for approval.

68C) The Secretary of State will pay Implementation Grant to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in accordance with the Approved Implementation Budget and in the notified format with supporting invoices, receipts and documents as required by the Secretary of State. If the grant claim is acceptable, the Secretary of State undertakes to pay the amount due within 21 days from the day on which it was received. If a dispute arises over whether a grant claim or part of it is acceptable, both parties undertake to attempt to resolve the dispute in good faith.

68D) Any amount in the Approved Implementation Budget in respect of which the expenditure has not been incurred by the Academy Trust by the date on which the Academy opens will lapse and no Implementation Grant will be payable in respect of that part of the Approved Implementation Budget. Any amount of Implementation Grant which has been paid but remains unexpended on relevant expenditure by the date on which the Academy opens will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy Trust after the Academy has opened. Any amount of Implementation Grant which is found to have been used on ineligible expenditure will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy Trust.

## **General Annual Grant**

69) GAG will be paid by the Secretary of State to the Academy Trust in order to cover the normal running costs of the Academy. These will include, but are not limited to:

- a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
- b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
- c) employees' expenses;
- d) the purchase, maintenance, repair and replacement:
  - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
- e) examination fees;
- f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- g) insurance;
- h) medical equipment and supplies;
- i) staff development (including in-service training);
- j) curriculum development;
- k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special

educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);

l) administration;

m) establishment expenses and other institutional costs.

70) Subject to clauses to 78-79, GAG for each Academy Financial Year for the Academy will be the total of the following areas of funding;

- a) Formula Funding: Funding equivalent to the level of funding which would be provided through the funding formula of the LA to a maintained school which had all of that Academy's relevant characteristics, including its number of pupils;
- b) Local Authority Central Spend Equivalent: Funding representing a proportion of the LA Education Budget money which the LA would be able to retain, from the non-delegated elements of the Schools Budget and the relevant items in the LA Block, if the Academy were a maintained school. The proportion which this funding will represent will be based on the elements of the LA's Section 52 Budget Return which are relevant to that Academy.
- c) Specialist Schools Allowance: Funding equivalent to that which a maintained school with the Academy's characteristics would receive in respect of their participation in the specialist schools programme;

71) The GAG for each Academy Financial Year for the Academy will also include, payable on a basis equivalent to that applied to maintained schools:

- a) funding for matters for which it is necessary for the Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
- b) payments in respect of further, specific grants made available to maintained schools, where the Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants.

72) Subject to clause 73, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year for the Academy will be the Academy Trust's estimate each November for numbers on roll in the following September for the Academy.



73) Once the conditions specified in clause 74 have been satisfied with respect to the Academy for the Academy Financial Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the Academy will be:

- a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the January preceding the Academy Financial Year in question; and
- b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.

74) For the purpose of clause 73, the conditions are:

- a) all planned Year-groups will be present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and
- b) the total number of pupils as measured in the Schools Census for the preceding January is 90% or more of the planned final size of the Academy, which is 1,150.

75) For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clause 72, an adjustment will be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise any variation from that estimate greater than or lower than 2.5%. The additional or clawed-back grant will be only that amount relevant to the number of pupils beyond the 2.5% variation.

76) For any Academy Financial Year in which GAG for the Academy is calculated in accordance with clause 73, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Academy Trust demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra classroom. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the annual letter of funding.

77) The Secretary of State recognises that:

- a) Where the Academy opens open with an intake representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the Academy Financial Years before all age groups are present at their planned size (the "Start-up Period") because of a lack of economies of scale. The Secretary of State undertakes to pay an appropriately larger GAG in the Start-up Period than would be justified solely on the basis of the methods set out in clauses 70-76, in order to enable the Academy to operate effectively. The Academy Trust will make a bid to the Secretary of State for this addition to GAG based upon need and providing appropriate supporting evidence;
  - b) Where the Academy opens with pupils transferred from one or more maintained schools which have closed, additional GAG resources will be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and, where necessary, to offer a dual curriculum.
- 78) During the Start-up Period or during the period when year groups are present who have transferred from a predecessor school or schools, the Secretary of State will pay a further element of GAG additional to that calculated in accordance with the methods set out in clauses 70-76 to allow the Academy to:
- a) purchase a basic stock of teaching and learning materials (including library books, text books, software, stationery, science equipment and equipment for physical education) and other consumable materials;
  - b) meet the costs associated with the recruitment and induction of additional teaching and other staff.

After the Start-up Period these costs will be met through the ordinary GAG.

- 79) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger GAG with respect to the Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 70-76, in order to enable the Academy to operate effectively.



80) The Secretary of State also recognises that if this Agreement is terminated for any reason by either party the number of pupils at the Academy is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.

81) GAG paid by the Secretary of State shall only be spent by the Academy Trust towards the normal running costs of the Academy.

### **Earmarked Annual Grant**

82) Earmarked Annual Grant ("EAG") shall be paid by the Secretary of State to the Academy Trust in respect of either recurrent or Capital Expenditure for such specific purposes as may from time to time be agreed between the Secretary of State and the Academy Trust and as described in the relevant funding letter. The Academy Trust shall only spend EAG in accordance with the scope, terms and conditions of the grant set out in the relevant funding letter.

83) Where the Academy Trust is seeking a specific EAG in relation to any Academy Financial Year, it shall submit a letter outlining its proposals and the reasons for its request to Academies Division, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

### **Arrangements for Payment of GAG and EAG**

84) The Secretary of State shall notify the Academy Trust in December preceding the start of each Academy Financial Year of the GAG and EAG figures in respect of the Academy which, subject to Parliamentary approval, the Secretary of State plans for that Academy Financial Year and of the assumptions and figures on which these are based.

85) If GAG or EAG is calculated incorrectly due to a mistake of the Secretary of State then:

- a) if this leads to an underpayment of GAG, the Secretary of State will correct the underpayment in subsequent Academy Financial Years;
- b) if this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

- 86) If GAG or EAG is calculated incorrectly because the Academy Trust provides incorrect information to the Secretary of State then;
- a) If this leads to an underpayment of GAG, the Secretary of State may correct the underpayment in subsequent Academy Financial Years;
  - b) If this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.
- 87) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for the Academy will be notified to the Academy Trust in a funding letter not later than 1 April preceding that Academy Financial Year (the "annual letter of funding"). The annual letter of funding will not include the amount that the Academy Trust will receive in respect of grants for which information to enable timely calculation is not available or is incomplete, such grants will be notified as soon as practicable later in the year. Amounts of EAG will be notified to the Academy Trust wherever possible in the annual letter of funding or as soon as practicable thereafter.
- 88) For the purposes of this Agreement, an Academy Financial Year shall be deemed to run from September to August, in order to align it to the school academic year. The Secretary of State undertakes to pay GAG in monthly instalments on or before the twenty fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the annual letter of funding.

#### **Other relevant funding**

- 89) The Secretary of State shall meet a proportion of the Academy Trust's costs arising from the inclusion of academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State shall meet the costs of the employees' prior eligible service, being service prior to the opening of the Academy, and the Academy Trust will meet the costs of service after the opening of the Academy. The Academy Trust shall seek the Secretary of State's consent for these redundancies, such consent not to be unreasonably withheld, before committing to the redundancies.

- 90) The Secretary of State may meet costs incurred by the Academy Trust in connection with the transfer of employees from any predecessor school under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Payment of grant in respect of such costs is to be agreed between the parties on a case by case basis and the Academy Trust shall not budget on the basis that it will receive any grant in respect of such costs unless it is specifically notified that such grant will be paid.
- 91) The Academy Trust may also receive funding from an LA in respect of the provision detailed in statements of SEN for pupils attending an Academy in accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Academy Trust shall ensure that all provision detailed in statements of SEN is provided for such pupils.
- 92) The Academy Trust may also receive funding for the Academy from the LA's Standards Fund. This is a scheme under which the Standards Fund money is to be distributed by the Secretary of State to LAs and schools and permits LAs to receive grants on behalf of academies in the same way as they can do for maintained schools. The Academy Trust must ensure that the Academy uses any grants received under the Standards Fund in accordance with any conditions specified in relation to that grant. Grants paid to the Academy Trust from the Standards Fund are not paid under this Agreement.

#### **Financial and Accounting Requirements**

- 93) The Principal shall be the Academy Trust's Accounting Officer. The Accounting Officer will be personally responsible to the Academy Trust for ensuring regularity and propriety, and for the economic, efficient and effective use of resources (i.e. ensuring value for money), and administration of the financial affairs of Academy Trust. The Accounting Officer may delegate or appoint others, such as a Finance Director, to assist in carrying out these responsibilities.
- 94) The Academy Trust shall abide by the provisions within the Academies Financial Handbook published by the DCSF and amended from time to time, which sets out in detail provisions for the financial management of the Academy including guidance on financial systems and controls and accounting and reporting requirements.
- 95) The formal budget plan should take into account items in the School Development Plan requiring expenditure and must be approved each Academy Financial Year by the Governing Body.

96) Any payment of grant by the Secretary of State in respect of the Academy is subject to his being satisfied as to the fulfilment by the Academy Trust of the following conditions:

- a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;
- b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;
- c) such financial statements are published at the end of each Academy Financial Year in such form and manner as the Secretary of State may reasonably direct and a copy sent to him by 31 December each Academy Financial Year. These should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Academy Trust's affairs and that the grants were used for the purposes intended;
- d) the Academy Trust prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;
- e) a statement of the accounting policies used is sent to the Secretary of State with the financial statements;
- f) the Academy Trust insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the site upon which the Academy is situated;
- g) the Academy Trust prepares and files with the Charity Commission annual accounts prepared in accordance with the Statement of Recommended Practice;
- h) the Academy Trust shall comply with their obligation under the Charities Act 1993 and the Charities Act 2006 (or any statutory re-enactment or modification of those Acts) with regard to the preparation of an annual report and its transmission to the Charity Commission;
- i) the Academy Trust shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State.



- 97) In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Academy Trust to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Academy Trust.
- 98) The books of accounts and all relevant records, files and reports of the Academy Trust including those relating to financial controls, shall be open at all reasonable times to officials of the DCSF and the National Audit Office and to contractors retained by the DCSF or the National Audit Office for inspection or the carrying out of value for money studies; and the Academy Trust shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.
- 99) The Academy Trust shall submit indicative budgets relating to the Academy to the Secretary of State by not later than 15 February before the start of each Academy Financial Year. Such budgets shall set out clearly the prospective income and expenditure of the Academy and shall differentiate, and give adequate details of:
- a) a statement of expected income for that Academy Financial Year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital and revenue expenditure, distinguishing between income from public funds including the national lottery and income from other sources. Income from cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital expenditure will not be taken into account by the Secretary of State in the calculation of GAG;
  - b) a statement of proposed recurrent expenditure for that Academy Financial Year;
  - c) a statement of proposed capital expenditure for that Academy Financial Year.
- 100) At the beginning of any Academy Financial Year the Academy Trust may hold unspent GAG from previous Academy Financial Years amounting to 12% of the total GAG payable for the Academy in the Academy Financial Year just ended or such higher amount as may from time to time be agreed. This carried forward amount may be used as follows:

- a) equivalent to 2% of the total GAG payable in the Academy Financial Year just ended may be used by the Academy Trust for any of the purposes for which GAG is paid;
  - b) equivalent to 12% of the total GAG payable in the Academy Financial Year just ended, or such higher figure as may from time to time be agreed, minus any amount used under sub-clause (a) above, may be used on the upkeep and improvement of premises, including the costs of equipment and routine repairs and maintenance of the Academy, and on capital expenditure relating to the Academy.
- 101) Notwithstanding clause 100, any additional grant provided over and above that set out in clauses 70-76 and made in accordance with clauses 77-79 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 79 come to an end.
- 102) Any savings of GAG not allowed to be carried forward under clauses 100-101 will be taken into account in the payment of subsequent grant.
- 103) The Academy Trust may also accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of the Academy as it sees fit. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Academy Trust's balance sheet.
- 104) The Academy Trust shall not, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:
- a) except such as are given in normal contractual relations, give any guarantees, indemnities or letters of comfort;
  - b) write off any debts or liabilities owed to it above a value to be set out in the annual letter of funding, nor offer to make any ex gratia payments;
  - c) make any sale or purchase of freehold property; or
  - d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.
- 105) Each discovered loss of an amount exceeding the amount set out in the annual letter of funding, and arising from suspected theft or fraud, shall be reported by the Academy Trust to the Secretary of State at the earliest opportunity.

- 106) It is the responsibility of the Academy Trust to ensure that the Academy balances its budget from Academy Financial Year to Academy Financial Year.

#### **Borrowing Powers**

- 107) The Academy Trust shall not borrow without specific approval of the Secretary of State, such approval may only be granted in limited circumstances. The Academy Trust shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval by the Academy Trust in General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.

#### **Disposal of Assets**

- 108) Where the Academy Trust acquires assets for a nil consideration or at an under value it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Academy Trust at nil or nominal consideration and which were previously used for the purposes of an Academy and/or were transferred from an LA, the value of which assets shall be disregarded.
- 109) The sale or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset by the Academy Trust shall require the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, where:
- a) the Secretary of State paid capital grant in excess of £20,000 for the asset; or
  - b) the asset was transferred to the Academy Trust from an LA for no or nominal consideration.

Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the Secretary of State's consent in the circumstances set out above and reinvestment exceeding £1,000,000 or with other special features will be subject to Parliamentary approval. The percentage of the proceeds for which consent is needed is the percentage of the initial price of the asset which was paid by capital grant from the Secretary of State.

- 110) This clause applies in the event, during the lifetime of this Agreement, of the disposal of a capital asset for which capital grant of any amount was paid by the Secretary of



State, where the asset was acquired by the Academy Trust. In this event, the Academy Trust shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Academy Trust for its charitable purposes.

- 111) This clause applies in the event, during the lifetime of this Agreement, that the Secretary of State consents to the disposal of an asset which was transferred to the Academy Trust from an LA for no or nominal consideration. In this event the Secretary of State may give consent on the basis that all or part of the proceeds of the disposal should be made over to the LA from which the asset was transferred, taking into account the amount of the proceeds to be reinvested by the Academy Trust. The Secretary of State will have regard to any representations from the Academy Trust and the LA from which the asset was transferred before giving consent under this clause.
- 112) Except with the consent of the Secretary of State, the Academy Trust shall not dispose of assets for a consideration less than the best price that can reasonably be obtained, such consent not to be unreasonably withheld or delayed.

#### **TERMINATION**

- 113) Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2016, or any subsequent anniversary of that date.
- 114) If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of this Agreement or that the conditions and requirements set out in clauses 13-61 of this Agreement are not being met, or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.
- 115) Any such notice shall be in writing and shall:
  - a) state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of this Agreement or is not meeting the conditions and requirements of clauses 13-61 of this Agreement or the Academy Trust is otherwise in material breach of the provisions of this Agreement;

- b) specify the measures needed to remedy the situation or breach;
  - c) specify a reasonable date by which these measures are to be implemented; and
  - d) state the form in which the Academy Trust is to provide its response and a reasonable date by which it must be provided.
- 116) If no response is received by the date specified in accordance with clause 115(d), the Secretary of State may give the Academy Trust 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.
- 117) If a response is received by the date specified in accordance with clause 115(d) the Secretary of State shall consider it, and any representations made by the Academy Trust, and shall, within three months of its receipt, indicate that:
- a) he is content with the response and/or that the measures which he specified are being implemented; or
  - b) he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or
  - c) he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate this Agreement.
- 118) In the circumstances of clause 117(c) the Secretary of State shall notify the Academy Trust why he believes that he cannot be reasonably satisfied and, if so requested by the Academy Trust within thirty days from such notification, he shall meet a deputation including representatives from Governing Body to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 12 of this Agreement or does not and will not meet the conditions and requirements set out in clauses 13-61 of this Agreement or the Academy Trust is in material breach of the provisions of this Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Academy Trust twelve months written notice to terminate this Agreement.
- 119) If the Secretary of State has cause to serve a notice on the Academy Trust under section 165 of the Education Act 2002 and a determination (from which all rights of

appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 118 may be shortened to a period deemed appropriate by the Secretary of State.

120) A "Special Measures Termination Event Occurs" when:

- a) the Chief Inspector gives a notice to the Academy Trust in accordance with section 13(3) of the Education Act 2005 (the "Special Measures Notice") stating that in his opinion special measures are required to be taken in relation to the Academy; and
- b) not less than the Minimum Period after the Special Measures Notice, the Chief Inspector carries out a subsequent inspection of the Academy in accordance with the Education Act 2005 and makes a report in accordance with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and
- c) the Secretary of State shall have requested the Academy Trust to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Academy Trust proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and
- d) the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Academy Trust is sufficient in all the circumstances, or, if no Further Action Statement shall have been given to the Secretary of State within the requested timeframe or otherwise.

121) If a Special Measures Termination Event occurs, the Secretary of State may:

- a) by notice in writing to the Academy Trust terminate this Agreement forthwith; or
- b) appoint such Further Governors as he thinks fit in accordance with the Academy Trust's Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.

122) In the event that the Secretary of State appoints Further Governors in accordance with clause 121(b), the Academy Trust must, upon the request of the Secretary of State, procure the resignation of the Sponsor Governors (as defined in the Articles) in accordance with the Academy Trust's Articles.

- 123) The Secretary of State may at any time by notice in writing terminate this Agreement forthwith on the occurrence of any of the following events:-
- a) the Academy Trust calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or
  - b) the Academy Trust proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986; or
  - c) the Academy Trust is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this clause, Section 123 (1) (a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Academy Trust shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Academy Trust; or
  - d) the Academy Trust has a receiver and manager (with the exception of Receivers and Managers or Interim Managers appointed by the Charity Commission under the Charities Act 1993 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or
  - e) any distraint, execution or other process is levied or enforced on any of the Academy Trust's property and is not paid out, withdrawn or discharged within fifteen Business Days; or
  - f) the Academy Trust has passed a resolution for its winding up; or
  - g) an order is made for the winding up or administration of the Academy Trust.
- 124) The Academy Trust shall notify the Secretary of State as soon as possible after receiving any petition which may result in an order for the winding up or administration of the Academy Trust and shall provide an explanation to the Secretary of State of the circumstances giving rise to the service of such a petition.

#### **Effect of Termination**

- 125) In the event of the termination of this Agreement however occurring the Secretary of State shall procure that his nominee (if any) shall resign as a member of the

Academy Trust and shall co-operate in making any associated amendments to the Academy Trust's Articles of Association.

- 126) In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Section 482 of the Education Act 1996.
- 127) Subject to clause 128, if the Secretary of State terminates this Agreement for reasons other than that a Special Measures Termination Event occurs, that the Academy no longer has the characteristics set out in clause 12 of this Agreement, or is no longer meeting the conditions and requirements set out in clauses 13-61 of this Agreement or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State shall indemnify the Academy Trust.
- 128) The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Academy Trust, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 129) The categories of expenditure incurred by the Academy Trust in consequence of the termination of this Agreement in respect of which the Secretary of State shall indemnify the Academy Trust include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 130) Subject to clause 131, on the termination of this agreement however occurring, the Academy Trust shall in respect of any of its capital assets at the date of termination:
  - (a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or
  - (b) if the Secretary of State confirms that a transfer under clause 130(a) is not



required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

- 131) The Secretary of State may waive in whole or in part the repayment due under clause 130(b) if:
- a) The Academy Trust obtains his permission to invest the proceeds of sale for its charitable objects; or
  - b) The Secretary of State directs all or part of the repayment to be paid to the Local Authority.
- 132) If any land or premises of the Academy were acquired by the Academy Trust from an LA by a scheme under Schedule 35A of the Education Act 1996 or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Schedule 35A (Paragraph 8) of the Education Act 1996, the Academy Trust may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Academy Trust and the LA from which the land was transferred before giving or withholding that consent.

## **GENERAL**

### **Information**

- 133) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on, inter alia, the Academy's:
- a) curriculum;
  - b) arrangements for the assessment of pupils;
  - c) targets, including those set in accordance with the provisions of clause 20;
  - d) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;

- e) class sizes;
  - f) outreach work with other schools and the local community;
  - g) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission;
  - h) numbers of pupils excluded (including permanent and fixed term exclusions);
  - i) levels of authorised and unauthorised attendance;
  - j) charging and remissions policies and the operation of those policies;
  - k) organisation, operation and building management;
  - l) financial controls; and
  - m) membership and proceedings of the Governing Body.
- 134) The Academy Trust shall make such information available to the Secretary of State, in such form and manner and at such times as may reasonably be required. The Secretary of State shall provide the Academy Trust with such information as it may reasonably require of him for the running of the Academy.

#### **Access by the Secretary of State's Officers**

- 135) The Academy Trust shall allow access to the premises of the Academy at any reasonable time to DCSF officials. All records, files and reports relating to the running of the Academy shall be available to them at any reasonable time. The Academy Trust shall provide the Secretary of State in advance with papers relating to the Academy prepared for meetings of the Governing Body and of the members of the Academy Trust. Two DCSF officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of the Academy's or the Academy Trust's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State. The Academy Trust shall take any steps which are required to secure its compliance with the obligations imposed by this clause of this Agreement.
- 136) The Academy Trust shall ensure that:

- a) the agenda for every meeting of the Governing Body;
  - b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
  - c) the signed minutes of every such meeting; and
  - d) any report, document or other paper considered at any such meeting,
- are made available for inspection by any interested party at the Academy and, as soon as is reasonably practicable, sent to the Secretary of State.

- 137) There may be excluded from any item required to be made available for inspection by any interested party and to be sent to the Secretary of State by virtue of clause 136, any material relating to:
- a) a named teacher or other person employed, or proposed to be employed, at the Academy;
  - b) a named pupil at, or candidate for admission to, the Academy; and
  - c) any matter which, by reason of its nature, the Academy Trust is satisfied should remain confidential.

#### **Notices**

- 138) Any notice or other communication concerning this Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Academy Trust at its registered office or such other addressee/address as may be notified in writing from time to time by the Academy Trust and, in the case of a notice or communication from the Academy Trust to the Secretary of State to Head of Academies Division, Department for Children, Schools and Families, Sanctuary Buildings, Great Smith Street, London SW1P 3BT; or such other address as may be notified from time to time by the Secretary of State and where any such notice or communication is sent by post, unless the contrary is proved, it shall be deemed, subject to satisfactory proof of posting, to be effected at the time at which the letter would be received in the ordinary course of post.
- 139) The service by the Secretary of State of a notice of termination of this Agreement shall not prejudice the ability of the Academy Trust (if it wishes to do so) during the

notice period to admit pupils to the Academy in accordance with the provisions of this Agreement and to receive GAG and EAG in respect of them.

#### **General**

- 140) The Secretary of State and the Academy Trust recognise the difficulties in catering in this Agreement for all the circumstances which may arise in relation to the Academy and undertake in good faith to conduct such consultations as may from time to time be desirable in order to promote the interests of the Academy throughout the currency of this Agreement.
- 141) If, at the time of entering this Agreement, the Academy Trust is not already registered with the Charity Commission, then for the period that discussions are ongoing between the Charity Commission and the DCSF as to the charitable status of academy trusts, the Academy Trust shall not be required to register as a charity. When the charitable status of academy trusts has been finalised, the Secretary of State shall be entitled to serve an order on the Academy Trust requiring the Academy Trust to:
- a) take the steps set out in the order that are necessary to achieve registration with the Charity Commission, including any negotiation of the terms of this Agreement; or
  - b) take the steps set out in the order that are necessary to achieve registration of the Academy Trust as a Community Interest Company within the meaning of the Companies (Audit, Investigations and Community Enterprise) Act 2004.



This Agreement was executed as a Deed on 25<sup>th</sup> September 2009

EXECUTED on behalf of All Saints' Academy, Cheltenham

by:

[Redacted Signature]

Director

[Redacted Signature]

Director/Secretary

The Corporate Seal of the Secretary of State for Children, Schools and Families, hereunto  
affixed was authenticated by:

[Redacted Signature]

Duly Authorised

[Redacted Signature]





**Funding Agreement Annex A:  
Memorandum and Articles of the Academy Trust**

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THE COMPANIES ACTS 1985 and 2006

A COMPANY LIMITED BY GUARANTEE  
AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION  
OF  
ALL SAINTS' ACADEMY, CHELTENHAM

As amended by Special Written Resolution dated: 30<sup>th</sup> June 2009

THE COMPANIES ACTS 1985 and 2006

A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION OF

ALL SAINTS' ACADEMY, CHELTENHAM

1. The company's name is All Saints' Academy, Cheltenham (and in this document it is called "**the Academy Trust**").
2. The Academy Trust's registered office is to be situated in England and Wales.
3. The Academy Trust's objects ("**the Objects**") are :
  - (a) to advance for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing a joint Church of England and Roman Catholic school offering a broad curriculum with a strong emphasis on, but in no way limited to science and sport, which shall carry out the education so as to incorporate the specific tenets, teachings and practices of the Roman Catholic Church, and the specific tenets, teachings and practices of the Church of England, in such combination as the Bishop and the Ordinary shall so decide ("**the Academy**"); and
  - (b) To provide or assist in the provision, in the interests of social welfare, of facilities for recreation or other leisure time occupation for people who have need of such facilities with the aim of improving the conditions of life of such persons for the public benefit.
4. In furtherance of the Objects but not further or otherwise the Academy Trust may exercise the following powers:-
  - (a) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments, and to operate bank accounts in the name of the Academy Trust;
  - (b) to raise funds and to invite and receive contributions provided that in

raising funds the Academy Trust shall not undertake any substantial permanent trading activities and shall conform to any relevant statutory regulations;

- (c) to acquire, alter, improve and (subject to such consents as may be required by law) to charge or otherwise dispose of property;
- (d) subject to clause 5 below to employ such staff, as are necessary for the proper pursuit of the Objects and to make all reasonable and necessary provision for the payments of pensions and superannuation to staff and their dependants;
- (e) to establish or support, whether financially or otherwise, any charitable trusts, associations or institutions formed for all or any of the Objects;
- (f) to co-operate with other charities, other independent and maintained schools, voluntary bodies and statutory authorities operating in furtherance of the Objects and to exchange information and advice with them;
- (g) to pay out of funds of the Academy Trust the costs, charges and expenses of and incidental to the formation and registration of the Academy Trust;
- (h) to establish, maintain, carry on, manage and develop the Academy at Howell Road, Cheltenham, Gloucester, GL51 0ED;
- (i) to offer scholarships, exhibitions, prizes and awards to pupils and former pupils, and otherwise to encourage and assist pupils and former pupils;
- (j) to provide educational facilities and services to students of all ages and the wider community for the public benefit;
- (k) to carry out research into the development and application of new techniques in education in particular in relation to the areas of curricular specialisation of the Academy and to its approach to curriculum development and delivery and to publish the results of such research, and to develop means of benefiting from application of the experience of industry, commerce, other schools and the voluntary sector to the education of pupils in academies;
- (l) subject to such consents as may be required by law and/or by any contract

entered into by or on behalf of the Academy Trust, to borrow and raise money for the furtherance of the Objects in such manner and on such security as the Academy Trust may think fit;

(m) to deposit or invest any funds of the Academy Trust not immediately required for the furtherance of its objects (but to invest only after obtaining such advice from a financial expert as the Governors consider necessary and having regard to the suitability of investments and the need for diversification);

(n) to delegate the management of investments to a financial expert, but only on terms that:

- (i) the investment policy is set down in writing for the financial expert by the Governors;
- (ii) every transaction is reported promptly to the Governors;  
the performance of the investments is reviewed regularly with the Governors;
- (iii) the Governors are entitled to cancel the delegation arrangement at any time;
- (iv) the investment policy and the delegation arrangement are reviewed at least once a year;
- (v) all payments due to the financial expert are on a scale or at a level which is agreed in advance and are notified promptly to the Governors on receipt; and
- (vi) the financial expert must not do anything outside the powers of the Governors;

(o) to arrange for investments or other property of the Academy Trust to be held in the name of a nominee company acting under the control of the Governors or of a financial expert acting under their instructions, and to pay any reasonable fee required;

(p) to provide indemnity insurance to cover the liability of Governors which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default, breach of trust or breach of duty of which they may be guilty in relation to the Academy Trust: Provided that any such insurance



shall not extend to any claim arising from any act or omission which the Governors knew to be a breach of trust or breach of duty or which was committed by the Governors in reckless disregard of whether it was a breach of trust or breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against the Governors in their capacity as Governors;

(q) to establish subsidiary companies to carry on any trade or business for the purpose of raising funds for the Academy Trust;

(r) to do all such other lawful things as are necessary for or are incidental to or conducive to the achievement of the Objects.

5.1 The income and property of the Academy Trust shall be applied solely towards the promotion of the Objects.

5.2 None of the income or property of the Company may be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to any member of the Company. Nonetheless a member of the Academy Trust who is not also a Governor may:

- a) benefit as a beneficiary of the Academy Trust;
- b) be paid reasonable and proper remuneration for any goods or services supplied to the Academy Trust;
- c) be paid rent for premises let by the member of the Academy Trust if the amount of the rent and other terms of the letting are reasonable and proper; and
- d) be paid interest on money lent to the Academy Trust at a reasonable and proper rate, such rate not to exceed 2 per cent per annum below the base lending rate of a UK clearing bank selected by the Governors.

5.3 A Governor may benefit from any indemnity insurance purchased at the Academy Trust's expense to cover the liability of the Governors which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default or breach of trust or breach of duty of which they may be

guilty in relation to the Academy Trust: Provided that any such insurance shall not extend to any claim arising from any act or omission which Governors knew to be a breach of trust or breach of duty or which was committed by the Governors in reckless disregard to whether it was a breach of trust or breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against Governors in their capacity as directors of the Academy Trust.

- 5.4 A company, which has shares listed on a recognised stock exchange and of which any one Governor holds no more than 1% of the issued capital of that company, may receive fees, remuneration or other benefit in money or money's worth from the Academy Trust.
- 5.5 A Governor may at the discretion of the Governors be reimbursed from the property of the Academy Trust for reasonable expenses properly incurred by him or her when acting on behalf of the Academy Trust, but excluding expenses in connection with foreign travel.
- 5.6 No Governor may:
- (a) buy any goods or services from the Academy Trust;
  - (b) sell goods, services, or any interest in land to the Academy Trust;
  - (c) be employed by, or receive any remuneration from the Academy Trust;
  - (d) receive any other financial benefit from the Academy Trust;
- unless:
- (i) the payment is permitted by clause 5.7 and the Governors follow the procedure and observe the conditions set out in clause 5.8; or
  - (ii) the Governors obtain the prior written approval of the Charity Commission and fully comply with any procedures it prescribes.
- 5.7 Subject to clause 5.8, a Governor may:
- a) Receive a benefit from the Academy Trust in the capacity of a beneficiary of the Academy Trust.

- b) Be employed by the Academy Trust or enter into a contract for the supply of goods or services to the Academy Trust, other than for acting as a Governor.
- c) Receive interest on money lent to the Academy Trust at a reasonable and proper rate not exceeding 2% per annum below the base rate of a clearing bank to be selected by the Governors.
- (d) Receive rent for premises let by the Governor to the Academy Trust if the amount of the rent and the other terms of the lease are reasonable and proper.

5.8 The Academy Trust and its Governors may only rely upon the authority provided by clause 5.7 if each of the following conditions is satisfied:

- (a) The remuneration or other sums paid to the Governor do not exceed an amount that is reasonable in all the circumstances.
- (b) The Governor is absent from the part of any meeting at which there is discussion of:
  - i) his or her employment, remuneration, or any matter concerning the contract, payment or benefit; or
  - ii) his or her performance in the employment, or his or her performance of the contract; or
  - iii) any proposal to enter into any other contract or arrangement with him or her or to confer any benefit upon him or her that would be permitted under clause 5.7; or
  - (iv) any other matter relating to a payment or the conferring of any benefit permitted by clause 5.7.
- (c) The Governor does not vote on any such matter and is not to be counted when calculating whether a quorum of Governors is present at the meeting.
- (d) The other Governors are satisfied that it is in the interests of the Academy Trust to employ or to contract with that Governor rather than with someone who is not a Governor. In reaching that decision the Governors must balance the advantage of employing a Governor against the disadvantages of doing so (especially the loss of the Governor's services as a result of

dealing with the Governor's conflict of interest).

- (e) The reason for their decision is recorded by the Governors in the minute book.
- (f) A majority of the Governors then in office have received no such payments or benefit.

5.9 In clauses 5.2-5.9:

- (a) "company" shall include any company in which the Academy Trust:
  - holds more than 50% of the shares; or
  - controls more than 50% of the voting rights attached to the shares; or
  - has the right to appoint one or more directors to the board of the company.
- (b) "Governor" shall include any child, stepchild, parent, grandchild, grandparent, brother, sister or spouse of the governor or any person living with the governor as his or her partner
- (c) The employment or remuneration of a Governor includes the engagement or remuneration of any firm or company in which the Governor is:
  - (i) a partner;
  - (ii) an employee;
  - (iii) a consultant;
  - (iv) a director;
  - (v) a member; or
  - (v) a shareholder, unless the shares of the company are listed on a recognised stock exchange and the Governor holds less than 1% of the issued capital.

6. The liability of the members of the Academy Trust is limited.

7. Every member of the Academy Trust undertakes to contribute such amount as may be required (not exceeding £10) to the Academy Trust's assets if it should be wound up while he or she is a member or within one year after he or she ceases to be a member, for payment of the Academy Trust's debts and liabilities before he or she ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.
8. If the Academy Trust is wound up or dissolved and after all its debts and liabilities (including any under section 483 of the Education Act 1996) have been satisfied there remains any property it shall not be paid to or distributed among the members of the Academy Trust, but shall be given or transferred to some other charity or charities having objects similar to the Objects which prohibits the distribution of its or their income and property to an extent at least as great as is imposed on the Academy Trust by clause 5 above, chosen by the members of the Academy Trust at or before the time of dissolution and if that cannot be done then to some other charitable object.
9. No alteration or addition shall be made to or in the provisions of the Memorandum or Articles of Association without the explicit consent of the Secretary of State.
10. No alteration or addition shall be made to or in the provisions of the Memorandum or Articles of Association which would have the effect (a) that the Academy Trust would cease to be a company to which section 30 of the Companies Act 1985 applies; or (b) that the Academy Trust would cease to be a charity.
11. Words or expressions contained in this Memorandum of Association shall, unless the context requires otherwise, bear the same meaning as in the Articles of Association of the Academy Trust.



THE COMPANIES ACTS 1985 AND 2006

A COMPANY LIMITED BY GUARANTEE  
AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION  
OF  
ALL SAINTS' ACADEMY, CHELTENHAM

COMPANY NUMBER:

6831538

THE COMPANIES ACTS 1985 AND 2006  
A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE  
CAPITAL  
ARTICLES OF ASSOCIATION  
OF  
ALL SAINTS' ACADEMY, CHELTENHAM

INTERPRETATION

1. In these Articles:-
  - a. "the Academy" means the school referred to in clause 3 of the Memorandum and established by the Academy Trust;
  - b. "the Academy Trust" means the company intended to be regulated by these Articles;
  - c. "Additional Governors" means the Governors appointed pursuant to Article 53;
  - d. "the Articles" means these Articles of Association of the Academy Trust;
  - d(i) "the Bishop" means the Bishop for the time being of the Diocese of Gloucester or, in the absence of the Bishop exercising jurisdiction, the Archdeacon, official or other commissary to whom the Bishop has committed authority or other person having ecclesiastical jurisdiction as Lord Bishop of Gloucester in accordance with the Ecclesiastical laws of the Church of England.
  - d (ii) "the Catholic Sponsor" means the Clifton Diocesan Trust;
  - d (iii) "the Church of England Sponsor" means the Trustees of the Gloucester Diocesan Board of Education (incorporated);
  - e. "clear days" in relation to the period of a notice means the period excluding the day when the notice is given or deemed to be given and the day on which it is given or on which it is to take effect;

- e (i) "Education Partner Governors" means the Governors appointed pursuant to Article 49E;
- f. "financial expert" means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000;
- g. "Funding Agreement" means the agreement made under section 482 of the Education Act 1996 between the Academy Trust and the Secretary of State to establish the Academy;
- h. "Further Governors" means the Governors appointed pursuant to Article 54;
- i. "the Governors" means the directors of the Academy Trust (and "Governor" means any one of those directors);
- j. "the LA" means the local authority covering the area in which the Academy is situated;
- k. "Local Authority Associated Persons" means any person associated with any local authority within the meaning given in section 69 of the Local Government and Housing Act 1989;
- l. "Member" means a member of the Academy Trust and someone who as such is bound by the undertaking contained in clause 7 of the Memorandum;
- m. "the Memorandum" means the Memorandum of Association of the Academy Trust;
- n. "Office" means the registered office of the Academy Trust;
- n (i) "the Ordinary" means the Bishop for the time being of the Diocese of Clifton and in the case of the see being vacant or impeded includes the person having ecclesiastical jurisdiction as Ordinary in accordance with the Canon Law of the Roman Catholic Church;
- o. "Principal Sponsors" means the Catholic Sponsor and the Church of England Sponsor, both of whom are subscribers to the Memorandum and Articles;

- p. "Principal" means the head teacher of the Academy;
- q. "the seal" means the common seal of the Academy Trust if it has one;
- r. "Secretary" means the secretary of the Academy Trust or any other person appointed to perform the duties of the secretary of the Academy Trust, including a joint, assistant or deputy secretary;
- s. "Secretary of State" means the Secretary of State for Children, Schools and Families or successor;
- t. "Sponsor Governors" means the Governors appointed in accordance with Articles 39 or 41 and "Sponsor Governor" shall mean any one of these Governors;
- u. "teacher" means a person employed under a contract of employment or a contract for services or otherwise engaged to provide his services as a teacher at the Academy;
- v. "the United Kingdom" means Great Britain and Northern Ireland;
- w. words importing the masculine gender only shall include the feminine gender. Words importing the singular number shall include the plural number, and vice versa;
- x. subject as aforesaid, words or expressions contained in these Articles shall, unless the context requires otherwise, bear the same meaning as in the Companies Act 1985 or the Companies Act 2006, as appropriate;
- y. any reference to a statute or statutory provision shall include any statute or statutory provision which replaces or supercedes such statute or statutory provision including any modification or amendment thereto.

## OBJECTS

2. The Academy Trust is established for the Objects expressed in the Memorandum.

## MEMBERS

3. The Members of the Academy Trust shall comprise:
  - a. Three persons nominated by the Ordinary;
  - b. Three persons nominated by the Bishop;
  - c. 1 person appointed by the Secretary of State, in the event that the Secretary of State appoints a person for this purpose;
  - d. the chairman of the Governors.; and
  - e. any person appointed under Article 7;
4. Each of the persons entitled to appoint Members in Article 3 shall have the right from time to time by written notice delivered to the Office to remove any Member appointed by them and to appoint a replacement Member to fill a vacancy whether resulting from such removal or otherwise.
5. [Not Used]
6. Membership will terminate automatically if:
  - a) a Member (which is a corporate entity) ceases to exist and is not replaced by a successor institution;
  - b) a Member (which is an individual) dies or becomes incapable by reason of mental disorder, illness or injury of managing and administering his or her own affairs; or
  - c) a Member becomes insolvent or makes any arrangement or composition with that Member's creditors generally.
7. The Members may agree unanimously in writing to appoint such additional Members as they think fit and may unanimously in writing agree to remove any such additional Members.
8. Every person nominated to be a Member of the Academy Trust



shall either sign a written consent to become a Member or sign the register of Members on becoming a Member.

9. The other Members may in their absolute discretion permit any Member to resign provided that after such resignation the number of Members is not less than three. A Member shall cease to be one immediately on the receipt by the Academy Trust of a notice in writing signed by the person or persons entitled to remove him under Article 4 or 7 provided that no such notice shall take effect when the number of Members is less than three unless it contains or is accompanied by the appointment of a replacement Member.

#### GENERAL MEETINGS

10. The Academy Trust shall hold an Annual General Meeting each year in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one Annual General Meeting of the Academy Trust and that of the next. Provided that so long as the Academy Trust holds its first Annual General Meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The Annual General Meeting shall be held at such time and place as the Governors shall appoint. All general meetings other than Annual General Meetings shall be called Extraordinary General Meetings.
11. The Governors may call general meetings and, on the requisition of Members pursuant to the provisions of the Companies Act 2006, shall forthwith proceed to convene a general meeting in accordance with that Act. If there are not within the United Kingdom sufficient Governors to call a general meeting, any Governor or any Member of the Academy Trust may call a general meeting.

#### NOTICE OF GENERAL MEETINGS

12. General meetings shall be called by at least fourteen clear days'

notice but a general meeting may be called by shorter notice if it is so agreed by a majority in number of Members having a right to attend and vote, being a majority together holding not less than 90 per cent of the total voting rights at the meetings of all the Members.

The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an Annual General Meeting, shall specify the meeting as such. The notice shall also state that the Member is entitled to appoint a proxy.

The notice shall be given to all the Members, to the Governors and auditors.

13. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

#### PROCEEDINGS AT GENERAL MEETINGS.

14. No business shall be transacted at any meeting unless a quorum is present. A Member counts towards the quorum by being present either in person or by proxy. Two persons entitled to vote upon the business to be transacted, each being a Member or a proxy of a Member or a duly authorised representative of a Member organisation shall constitute a quorum.
15. If a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Governors may determine.
16. The chairman, if any, of the Governors or in his absence some other Governor nominated by the Governors shall preside as

chairman of the meeting, but if neither the chairman nor such other Governor (if any) be present within fifteen minutes after the time appointed for holding the meeting and willing to act, the Governors present shall elect one of their number to be chairman and, if there is only one Governor present and willing to act, he shall be the chairman.

17. If no Governor is willing to act as chairman, or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be chairman.
18. A Governor shall, notwithstanding that he is not a Member, be entitled to attend and speak at any general meeting.
19. The chairman may, with the consent of a majority of the Members at a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.
20. A resolution put to the vote of the meeting shall be decided on a show of hands unless before, or on the declaration of the result of the show of hands a poll is duly demanded. Subject to the provisions of the Companies Act 2006, a poll may be demanded:-
  - (a) by the chairman; or
  - (b) by at least two Members having the right to vote at the meeting.
  - (c) by a Member or Members representing not less than one-tenth

of the total voting rights of all the Members having the right to vote at the meeting.

21. Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
22. The demand for a poll may be withdrawn, before the poll is taken, but only with the consent of the chairman. The withdrawal of a demand for a poll shall not invalidate the result of a show of hands declared before the demand for the poll was made.
23. A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be Members) and fix a time and place for declaring the results. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
24. A poll demanded on the election of the chairman or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time and place as the chairman directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent continuance of a meeting for the transaction of any business other than the question on which the poll is demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.
25. No notice need be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In other cases at least seven clear days' notice shall be given specifying the time and place at which the poll

is to be taken.

26. A resolution in writing agreed by such number of members as required if it had been proposed at a general meeting shall be as effectual as if it had been passed at a general meeting duly convened and held and may consist of several instruments in the like form each agreed by one or more Members.

#### VOTES OF MEMBERS

27. On the show of hands every Member present in person shall have one vote. On a poll every Member present in person or by proxy shall have one vote.
28. [not used]
29. No Member shall be entitled to vote at any general meeting unless all moneys then payable by him to the Academy Trust have been paid.
30. No objections shall be raised to the qualification of any person to vote at any general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.
31. An instrument appointing a proxy shall be in writing, signed by or on behalf of the appointer and shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the Governors may approve) -

"I/We, ....., of ....., being a Member/Members of the above named Academy Trust, hereby appoint ..... of ....., or in his absence, ..... of ....., as my/our proxy to vote in my/our name[s] and on my/our behalf at the annual/extraordinary general meeting of the Academy Trust to be held on ....20[ ]], and at any



adjournment thereof.

Signed on ..... 20[ ]"

32. Where it is desired to afford Members an opportunity of instructing the proxy how he shall act the instrument appointing a proxy shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the Governors may approve)-

"I/We, ....., of ....., being a Member/Members of the above-named Academy Trust, hereby appoint .... of ....., or in his absence, .... of ....., as my/our proxy to vote in my/our name[s] and on my/our behalf at the annual/extraordinary general meeting of the Academy Trust, to be held on .... 20[ ], and at any adjournment thereof.

This form is to be used in respect of the resolutions mentioned below as follows:

Resolution No. 1 \*for \* against

Resolution No. 2 \*for \* against

- Strike out whichever is not desired.

Unless otherwise instructed, the proxy may vote as he thinks fit or abstain from voting.

Signed on .... 20[ ]"

33. The instrument appointing a proxy and any authority under which it is signed or a copy of such authority certified by a notary or in some other way approved by the Governors may -

- (a) be deposited at the office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the

Academy Trust in relation to the meeting not less than 48 hours (excluding weekends and bank holidays) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or

- (b) in the case of a poll taken more than 48 hours after it is demanded, be deposited as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll;
- (c) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairman or to the Secretary or to any Governor;

and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.

- 34. A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Academy Trust at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote given or the poll demanded or (or in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.
- 35. Any organisation which is a Member of the Academy Trust may by resolution of its board of Governors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Academy Trust, and the person so authorised shall be entitled to exercise the same powers on behalf of the organisation which he represents as that organisation could exercise if it were an individual Member of the Academy Trust.

## GOVERNORS

36. The number of Governors shall be not less than three but (unless otherwise determined by ordinary resolution) shall not be subject to any maximum.
37. Subject to Articles 39-40 and 55, the Academy Trust shall have the following Governors:
  - a. up to 8 Sponsor Governors, appointed under Article 39 or 41;
  - b. 1 Sponsor Governor to be appointed by the Bishop;
  - c. 1 Sponsor Governor to be appointed by the Ordinary;
  - d. 1 LA Governor if appointed under Article 42;
  - e. 2 Parent Governors appointed under Articles 44-49;
  - f. 2 Staff Governors appointed under Articles 49A to 49B
  - g. up to 1 Education Partner Governor appointed under Article 49E;
  - h. the Principal;
  - i. any Additional Governors, if appointed under Article 53; and
  - j. any Further Governors, if appointed under Article 54.
38. The Academy Trust may also have any co-opted Governor appointed under Article 50.
39. The first Governors shall be those persons named in the statement delivered pursuant to section 10(2) of the Companies Act 1985, who shall be deemed to be Sponsor Governors.
40. Future Governors shall be appointed or elected, as the case may be, under these Articles. Where it is not possible for such a Governor to be appointed or elected due to the fact that an

Academy has not yet been established or the Principal has not been appointed, then the relevant Article or part thereof shall not apply.

#### APPOINTMENT OF GOVERNORS

41. The Principal Sponsors shall appoint the Sponsor Governors, so that the Church of England Sponsor shall appoint up to five Governors (to include the Sponsor Governor appointed by the Bishop), and the Catholic Sponsor shall also appoint up to five Governors (to include the Sponsor Governor appointed by the Ordinary) and so far as possible, there shall be an equal representation from both Principal Sponsors. Either or both of the Ordinary and the Bishop may appoint themselves as Sponsor Governors.
42. The LA may appoint the LA Governor.
43. The Principal shall be treated for all purposes as being an ex officio Governor.
44. Subject to Article 48, the Parent Governor(s) shall be elected by parents of registered pupils at the Academy. A Parent Governor must be a parent of a pupil at the Academy at the time when he is elected.
45. The Governing Body shall make all necessary arrangements for, and determine all other matters relating to, an election of Parent Governors, including any question of whether a person is a parent of a registered pupil at the Academy. Any election of Parent Governors which is contested shall be held by secret ballot.
46. The arrangements made for the election of a Parent Governor shall provide for every person who is entitled to vote in the election to have an opportunity to do so by post or, if he prefers, by having his ballot paper returned to the Academy Trust by a registered pupil at

the Academy.

47. Where a vacancy for a Parent Governor is required to be filled by election, the Governing Body shall take such steps as are reasonably practical to secure that every person who is known to them to be a parent of a registered pupil at the Academy is informed of the vacancy and that it is required to be filled by election, informed that he is entitled to stand as a candidate, and vote at the election, and given an opportunity to do so.
48. The number of Parent Governors required shall be made up by Parent Governors appointed by the Governing Body if the number of parents standing for election is less than the number of vacancies.
49. In appointing a Parent Governor the Governing Body shall appoint a person who is the parent of a registered pupil at the Academy, or where it is not reasonably practical to do so, a person who is the parent of a child of compulsory school age.
- 49A. The Staff Governor shall be elected by the staff members at the Academy.
- 49B. The Staff Governor must be a member of staff at the time when he is elected. If a Staff Governor ceases to be employed by the Academy Trust then he shall be deemed to have resigned and shall cease to be a Governor. For this purpose, "member of staff" means a person employed under a contract of employment at the Academy.
- 49C. The Governing Body shall make all necessary arrangements for, and determine all other matters relating to, an election of the Staff Governor, including any question of whether a person is employed under a contract of employment or a contract for services or otherwise engaged to provide his services at the Academy.



49D. Any election of the Staff Governor which is contested shall be held by secret ballot.

49E The Education Partner Governors shall be appointed by such educational institutions or bodies as may be agreed by the Governors.

#### CO-OPTED GOVERNORS

50. The Sponsor Governors appointed by the Church of England Sponsor (to include the Sponsor Governor appointed by the Bishop) and the Sponsor Governors appointed by the Catholic Sponsor (to include the Sponsor Governor appointed by the Ordinary) may appoint up to 1 co-opted Governor each. A 'co-opted Governor' means a person who is appointed to be a Governor by being co-opted by Sponsor Governors who have not themselves been so appointed.

#### APPOINTMENT OF ADDITIONAL GOVERNORS

51. The Secretary of State may give a warning notice to the Governors where—

(a) he is satisfied—

- i) that the standards of performance of pupils at the Academy is unacceptably low and is likely to remain so unless the Secretary of State exercises his powers under Article 53, or
- ii) that there has been a serious breakdown in the way the Academy is managed or governed which is prejudicing, or likely to prejudice, such standards of performance, or
- iii) that the safety of pupils or staff of the Academy is threatened (whether by a breakdown of discipline or otherwise); and

(b) the Secretary of State has previously informed the Governors of

the matters on which that conclusion is based; and

- (c) those matters have not been remedied to the Secretary of State's satisfaction within a reasonable period.

52. For the purposes of Article 51 a 'warning notice' is a notice in writing by the Secretary of State to the Academy Trust delivered to the Office setting out—

- a) the matters referred to in Article 51(a);
- b) the action which he requires the Governors to take in order to remedy those matters; and
- c) the period within which that action is to be taken by the Governors ('the compliance period').

53. The Secretary of State may appoint such Additional Governors as he thinks fit if the Secretary of State has:

- a) given the Governors a warning notice in accordance with Article 51; and
- b) the Governors have failed to comply, or secure compliance, with the notice to the Secretary of State's satisfaction within the compliance period; and
- c) the Secretary of State has given reasonable notice in writing to the Governors that he proposes to exercise his powers under this Article.

54. The Secretary of State may also appoint such Further Governors as he thinks fit if a Special Measures Termination Event (as defined in the Funding Agreement) occurs in respect of the Academy.

55. Where the Secretary of State appoints any Further Governors in accordance with Article 54, upon the request of the Secretary of State, any Sponsor Governors holding office immediately preceding

the appointment of such Governors shall resign immediately, in which case the Principal Sponsors' power to appoint Governors under Article 41 shall cease.

#### TERM OF OFFICE

56. The term of office for any Governor shall be four years from the date of their appointment and shall be determined by the person or persons appointing him, save that this time limit shall not apply to the Principal. Subject to remaining eligible to be a particular type of Governor, any Governor may be re-appointed or re-elected.

#### RESIGNATION AND REMOVAL

57. A Governor shall cease to hold office if he resigns his office by notice to the Academy Trust (but only if at least three Governors will remain in office when the notice of resignation is to take effect).
58. A Governor shall cease to hold office if he is removed by the person or persons who appointed him. This Article does not apply in respect of a Parent Governor.
59. Where a Governor resigns his office or is removed from office, the Governor or, where he is removed from office, those removing him, shall give written notice thereof to the Secretary.

#### DISQUALIFICATION OF GOVERNORS

60. No person shall be qualified to be a Governor unless he is aged 18 or over at the date of his election or appointment. No current pupil of the Academy shall be a Governor.
61. A Governor shall cease to hold office if he becomes incapable by reason of mental disorder, illness or injury of managing or administering his own affairs.
62. A Governor shall cease to hold office if he is absent without the permission of the Governors from all their meetings held within a

period of six months and the Governors resolve that his office be vacated.

63. A person shall be disqualified from holding or continuing to hold office as a Governor if—
  - a) his estate has been sequestrated and the sequestration has not been discharged, annulled or reduced; or
  - b) he is the subject of a bankruptcy restrictions order or an interim order.
64. A person shall be disqualified from holding or continuing to hold office as a Governor at any time when he is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order).
65. A Governor shall cease to hold office if he ceases to be a Governor by virtue of any provision in the Companies Act 1985 or the Companies Act 2006 or is disqualified from acting as a trustee by virtue of section 72 of the Charities Act 1993 (or any statutory re-enactment or modification of that provision).
66. [not used]
67. A person shall be disqualified from holding or from continuing to hold office as a Governor at any time when he is:
  - a) included in the list of teachers and workers with children or young persons whose employment is prohibited or restricted under section 1 of the Protection of Children Act 1999; or
  - b) disqualified from working with children under sections 28, 29, 29A and 29B of the Criminal Justice and Court Services Act 2000.

68. A person shall be disqualified from holding or continuing to hold office as a Governor if he is a person in respect of whom a direction has been made under section 142 of the Education Act 2002.
69. A person shall be disqualified from holding or continuing to hold office as a Governor where he has, at any time, been convicted of any criminal offence, excluding any that have been spent under the Rehabilitation of Offenders Act 1974 as amended, and excluding any offence for which the maximum sentence is a fine or a lesser sentence except where a person has been convicted of any offence which falls under section 72 of the Charities Act 1993.
70. After the Academy has opened, a person shall be disqualified from holding or continuing to hold office as a Governor if he has not provided to the chairman of the Governors a criminal records certificate at an enhanced disclosure level under section 113B of the Police Act 1997. In the event that the certificate discloses any information which would in the opinion of either the chairman or the Principal confirm their unsuitability to work with children that person shall be disqualified. If a dispute arises as to whether a person shall be disqualified, a referral shall be made to the Secretary of State to determine the matter. The determination of the Secretary of State shall be final.
71. Where, by virtue of these Articles a person becomes disqualified from holding, or continuing to hold office as a Governor; and he is, or is proposed, to become such a Governor, he shall upon becoming so disqualified give written notice of that fact to the Secretary.
72. Articles 60 to 71 and Articles 89-90 also apply to any member of any committee of the Governors who is not a Governor.

#### SECRETARY TO THE GOVERNORS

73. The Secretary shall be appointed by the Governors for such term,



at such remuneration and upon such conditions as they may think fit; and any Secretary so appointed may be removed by them. The Secretary shall not be a Governor or a Principal. Notwithstanding this Article, the Governors may, where the Secretary fails to attend a meeting of theirs, appoint any one of their number or any other person to act as Secretary for the purposes of that meeting.

#### CHAIRMAN AND VICE-CHAIRMAN OF THE GOVERNORS

74. The Governors shall each school year, at their first meeting in that year, elect a chairman and a vice-chairman from among their number. A Governor who is employed by the Academy Trust shall not be eligible for election as chairman or vice-chairman.
75. Subject to Article 76, the chairman or vice-chairman shall hold office as such until his successor has been elected in accordance with Article 77.
76. The chairman or vice-chairman may at any time resign his office by giving notice in writing to the Secretary. The chairman or vice-chairman shall cease to hold office if—
  - a) he ceases to be a Governor;
  - b) he is employed by the Academy Trust;
  - c) he is removed from office in accordance with these Articles; or
  - d) in the case of the vice-chairman, he is elected in accordance with these Articles to fill a vacancy in the office of chairman.
77. Where by reason of any of the matters referred to in Article 76, a vacancy arises in the office of chairman or vice-chairman, the Governors shall at their next meeting elect one of their number to fill that vacancy.
78. Where the chairman is absent from any meeting or there is at the time a vacancy in the office of the chairman, the vice-chairman shall

act as the chair for the purposes of the meeting.

79. Where in the circumstances referred to in Article 78 the vice-chairman is also absent from the meeting or there is at the time a vacancy in the office of vice-chairman, the Governors shall elect one of their number to act as a chairman for the purposes of that meeting, provided that the Governor elected shall not be a person who is employed by the Academy Trust.
80. The Secretary shall act as chairman during that part of any meeting at which the chairman is elected.
81. Any election of the chairman or vice-chairman which is contested shall be held by secret ballot.
82. The Governors may remove the chairman or vice-chairman from office in accordance with these Articles.
83. A resolution to remove the chairman or vice-chairman from office which is passed at a meeting of the Governors shall not have effect unless—
  - a) it is confirmed by a resolution passed at a second meeting of the Governors held not less than fourteen days after the first meeting; and
  - b) the matter of the chairman's or vice-chairman's removal from office is specified as an item of business on the agenda for each of those meetings.
84. Before the Governors resolve at the relevant meeting on whether to confirm the resolution to remove the chairman or vice-chairman from office, the Governor or Governors proposing his removal shall at that meeting state their reasons for doing so and the chairman or vice-chairman shall be given an opportunity to make a statement in response.

## POWERS OF GOVERNORS

85. Subject to provisions of the Companies Act 1985 and the Companies Act 2006, the Memorandum and the Articles and to any directions given by special resolution, the business of the Academy Trust shall be managed by the Governors who may exercise all the powers of the Academy Trust. No alteration of the Memorandum or the Articles and no such direction shall invalidate any prior act of the Governors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this Article shall not be limited by any special power given to the Governors by the Articles and a meeting of Governors at which a quorum is present may exercise all the powers exercisable by the Governors.
86. In addition to all powers hereby expressly conferred upon them and without detracting from the generality of their powers under the Articles the Governors shall have the following powers, namely:
- a) to expend the funds of the Academy Trust in such manner as they shall consider most beneficial for the achievement of the Objects and to invest in the name of the Academy Trust such part of the funds as they may see fit and to direct the sale or transposition of any such investments and to expend the proceeds of any such sale in furtherance of the Objects;
  - b) to enter into contracts on behalf of the Academy Trust.
87. In the exercise of their powers and functions, the Governors may consider any advice given by the Principal and any other executive officer.
88. Any bank account in which any money of the Academy Trust is deposited shall be operated by the Governors in the name of the Academy Trust. All cheques and orders for the payment of money from such an account shall be signed by at least two signatories

authorised by the Governors.

#### CONFLICTS OF INTEREST

89. Any Governor who has any duty or personal interest (including but not limited to any Personal Financial Interest) which conflicts or may conflict with his duties as a Governor shall disclose that fact to the Governors as soon as he becomes aware of it. A Governor must absent himself from any discussions of the Governors in which it is possible that a conflict will arise between his duty to act solely in the interests of the Academy Trust and any duty or personal interest (including but not limited to any Personal Financial Interest).
90. For the purpose of Article 89, a Governor has a Personal Financial Interest in the employment or remuneration of, or the provision of any other benefit to, that Governor as permitted by and as defined by clauses 5.5-5.9 of the Memorandum.

#### THE MINUTES

91. The minutes of the proceedings of a meeting of the Governors shall be drawn up and entered into a book kept for the purpose by the person acting as Secretary for the purposes of the meeting; and shall be signed (subject to the approval of the Governors) at the same or next subsequent meeting by the person acting as chairman thereof. The minutes shall include a record of:
- a) all appointments of officers made by the Governors; and
  - b) all proceedings at meetings of the Academy Trust and of the Governors and of committees of Governors including the names of the Governors present at each such meeting.

#### COMMITTEES

92. Subject to these Articles, the Governors may establish any

and proceedings of any committee shall be determined by the Governors. The establishment, terms of reference, constitution and membership of any committee of the Governors shall be reviewed at least once in every twelve months. The membership of any committee of the Governors may include persons who are not Governors, provided that a majority of members of any such committee shall be Governors. The Governors may determine that some or all of the members of a committee who are not Governors shall be entitled to vote in any proceedings of the committee. No vote on any matter shall be taken at a meeting of a committee of the Governors unless the majority of members of the committee present are Governors.

#### DELEGATION

93. The Governors may delegate to any Governor, committee, the Principal or any other holder of an executive office, such of their powers or functions as they consider desirable to be exercised by them. Any such delegation may be made subject to any conditions the Governors may impose, and may be revoked or altered.
94. Where any power or function of the Governors has been exercised by any committee, any Governor, Principal or any other holder of an executive office, that person or committee shall report to the Governors in respect of any action taken or decision made with respect to the exercise of that power or function at the meeting of the Governors immediately following the taking of the action or the making of the decision.

#### PRINCIPAL

95. The Governors shall appoint the Principal. The Governors may delegate such powers and functions as they consider are required by the Principal for the internal organisation management and



committee. Subject to these Articles, the constitution, membership

control of the Academy (including the implementation of all policies approved by the Governors and for the direction of the teaching and curriculum at the Academy.

- 95A. The Principal, Vice Principal, Head of Religious Education and Chaplain shall all be posts reserved to practising members of the Church of England or the Roman Catholic Church. Where possible, the Governors shall endeavour to ensure that both faiths are represented in the posts of Principal and Vice Principal.

#### MEETINGS OF THE GOVERNORS

96. Subject to these Articles, the Governors may regulate their proceedings as they think fit.
97. The Governors shall hold at least three meetings in every school year. Meetings of the Governors shall be convened by the Secretary. In exercising his functions under this Article the Secretary shall comply with any direction—
- a) given by the Governors; or
  - b) given by the chairman of the Governors or, in his absence or where there is a vacancy in the office of chairman, the vice-chairman of the Governors, so far as such direction is not inconsistent with any direction given as mentioned in (a).
98. Any three Governors may, by notice in writing given to the Secretary, requisition a meeting of the Governors; and it shall be the duty of the Secretary to convene such a meeting as soon as is reasonably practicable.
99. Each Governor shall be given at least fourteen clear days before the date of a meeting –
- a) notice in writing thereof, signed by the Secretary, and sent to each Governor at the address provided by each Governor from

time to time; and

- b) a copy of the agenda for the meeting;

provided that where the chairman or, in his absence or where there is a vacancy in the office of chairman, the vice-chairman, so determines on the ground that there are matters demanding urgent consideration, it shall be sufficient if the written notice of a meeting, and the copy of the agenda thereof are given within such shorter period as he directs.

- 100. The convening of a meeting and the proceedings conducted thereat shall not be invalidated by reason of any individual not having received written notice of the meeting or a copy of the agenda thereof.
- 101. A resolution to rescind or vary a resolution carried at a previous meeting of the Governors shall not be proposed at a meeting of the Governors unless the consideration of the rescission or variation of the previous resolution is a specific item of business on the agenda for that meeting.
- 102. A meeting of the Governors shall be terminated forthwith if—
  - (a) the Governors so resolve; or
  - (b) the number of Governors present ceases to constitute a quorum for a meeting of the Governors in accordance with Article 105, subject to Article 107.
- 103. Where in accordance with Article 102 a meeting is not held or is terminated before all the matters specified as items of business on the agenda for the meeting have been disposed of, a further meeting shall be convened by the Secretary as soon as is reasonably practicable, but in any event within seven days of the date on which the meeting was originally to be held or was so terminated.

104. Where the Governors resolve in accordance with Article 102 to adjourn a meeting before all the items of business on the agenda have been disposed of, the Governors shall before doing so determine the time and date at which a further meeting is to be held for the purposes of completing the consideration of those items, and they shall direct the Secretary to convene a meeting accordingly.
105. Subject to Article 107 the quorum for a meeting of the Governors, and any vote on any matter thereat, shall be any three Governors, or, where greater, any one third (rounded up to a whole number) of the total number of Governors holding office at the date of the meeting, and must include a majority of Sponsor Governors.
106. The Governors may act notwithstanding any vacancies in their number, but, if the numbers of Governors is less than the number fixed as the quorum, the continuing Governors may act only for the purpose of filling vacancies or of calling a general meeting.
107. The quorum for the purposes of—
- a. appointing a Parent Governor under Article 48;
  - b. any vote on the removal of a Governor in accordance with Article 58;
  - c. any vote on the removal of the chairman of the Governors in accordance with Article 82;
- shall be any two-thirds (rounded up to a whole number) of the persons who are at the time Governors entitled to vote on those respective matters.
108. Subject to these Articles, every question to be decided at a meeting of the Governors shall be determined by a majority of the votes of the Governors present and voting on the question. Every Governor shall have one vote.

109. Subject to Article 105-107, where there is an equal division of votes, the chairman of the meeting shall have a casting vote in addition to any other vote he may have.
110. The proceedings of the Governors shall not be invalidated by
- a. any vacancy among their number; or
  - b. any defect in the election, appointment or nomination of any Governor.
111. A resolution in writing, signed by all the Governors entitled to receive notice of a meeting of Governors or of a committee of Governors, shall be valid and effective as if it had been passed at a meeting of Governors or (as the case may be) a committee of Governors duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Governors.
112. Subject to Article 113, the Governors shall ensure that a copy of:
- a. the agenda for every meeting of the Governors;
  - b. the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
  - c. the signed minutes of every such meeting; and
  - d. any report, document or other paper considered at any such meeting,
- are, as soon as is reasonably practicable, made available at the Academy to persons wishing to inspect them.
113. There may be excluded from any item required to be made available in pursuance of Article 112, any material relating to—
- a. a named teacher or other person employed, or proposed to be employed, at the Academy;



- b. a named pupil at, or candidate for admission to, the Academy;  
and
- c. any matter which, by reason of its nature, the Governors are  
satisfied should remain confidential.

114. Any Governor shall be able to participate in meetings of the  
Governors by telephone or video conference provided that:

- a. he has given notice of his intention to do so detailing the  
telephone number on which he can be reached and/or  
appropriate details of the video conference suite from which he  
shall be taking part at the time of the meeting at least 48 hours  
before the meeting;
- b. the Governors have access to the appropriate equipment if after  
all reasonable effects it does not prove possible for the person  
to participate by telephone or video conference the meeting may  
still proceed with its business provided it is otherwise quorate.

#### PATRONS AND HONORARY OFFICERS

115. The Governors may from time to time appoint any person  
whether or not a Member of the Academy Trust to be a patron of the  
Academy Trust or to hold any honorary office and may determine for  
what period he is to hold such office.

#### THE SEAL

116. The seal, if any, shall only be used by the authority of the  
Governors or of a committee of Governors authorised by the  
Governors. The Governors may determine who shall sign any  
instrument to which the seal is affixed and unless otherwise so  
determined it shall be signed by a Governor and by the Secretary or by  
a second Governor.

#### ACCOUNTS

117. Accounts shall be prepared in accordance with the provisions of Part 15 of the Companies Act 2006.

#### ANNUAL REPORT

118. The Governors shall comply with their obligations under the Charities Act 1993 (or any statutory re-enactment or modification of that Act) with regard to the preparation of an annual report and its transmission to the Charity Commission.

#### ANNUAL RETURN

119. The Governors shall comply with their obligations under the Charities Act 1993 (or any statutory re-enactment or modification of that Act) with regard to the preparation of an annual return and its transmission to the Charity Commission.

#### NOTICES

120. Any notice to be given to or by any person pursuant to the Articles (other than a notice calling a meeting of the Governors) shall be in writing or shall be given using electronic communications to an address for the time being notified for that purpose to the person giving the notice. In these Articles, "Address" in relation to electronic communications, includes any number of addresses used for the purposes of such communications.
121. A notice may be given by the Academy Trust to a Member either personally or by sending it by post in a prepaid envelope addressed to the Member at his registered address or by leaving it at that address or by giving it using electronic communications to an address for the time being notified to the Academy Trust by the member. A Member whose registered address is not within the United Kingdom and who gives to the Academy Trust an address within the United Kingdom at which notices may be given to him, or an address to which notices may be sent using electronic communications, shall be entitled to have notices

given to him at that address, but otherwise no such Member shall be entitled to receive any notice from the Academy Trust.

122. A Member present, either in person or by proxy, at any meeting of the Academy Trust shall be deemed to have received notice of the meeting and, where necessary, of the purposes for which it was called.

123. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. Proof that a notice contained in an electronic communication was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, at the expiration of 48 hours after the time it was sent.

#### INDEMNITY

124. Subject to the provisions of the Companies Act 2006 every Governor or other officer or auditor of the Academy Trust shall be indemnified out of the assets of the Academy Trust against any liability incurred by him in that capacity in defending any proceedings, whether civil or criminal, in which judgment is given in favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Academy Trust.

#### RULES

125. The Governors may from time to time make such rules or bye laws as they may deem necessary or expedient or convenient for the proper conduct and management of the Academy Trust and for purposes of prescribing classes of and conditions of membership, and in particular but without prejudice to the generality of the foregoing,

they may by such rules or bye laws regulate:

- a. the admission and classification of Members of the Academy Trust (including the admission of organisations to membership) and the rights and privileges of such Members, and the conditions of membership and the terms on which Members may resign or have their membership terminated and the entrance fees, subscriptions and other fees or payments to be made by Members;
- b. the conduct of Members of the Academy Trust in relation to one another, and to the Academy Trust's servants;
- c. the setting aside of the whole or any part or parts of the Academy Trust's premises at any particular time or times or for any particular purpose or purposes;
- d. the procedure at general meetings and meetings of the Governors and committees of the Governors and meetings of the Local Governing Bodies in so far as such procedure is not regulated by the Articles;
- e. generally, all such matters as are commonly the subject matter of company rules.

126. The Academy Trust in general meeting shall have power to alter, add or to repeal the rules or bye laws and the Governors shall adopt such means as they think sufficient to bring to the notice of Members of the Academy Trust all such rules or bye laws, which shall be binding on all Members of the Academy Trust. Provided that no rule or bye law shall be inconsistent with, or shall affect or repeal anything contained in, the Memorandum or the Articles.

#### AVOIDING INFLUENCED COMPANY STATUS

127. Notwithstanding the number of Members from time to time, the maximum aggregate number of votes exercisable by Local Authority

Associated Persons shall never exceed 19.9% of the total number of votes exercisable by Members in general meeting and the votes of the other Members having a right to vote at the meeting will be increased on a pro-rata basis.

128. No person who is a Local Authority Associated Person may be appointed as a Governor if, once the appointment had taken effect, the number of Governors who are Local Authority Associated Persons would represent 20% or more of the total number of Governors. Upon any resolution put to the Governors, the maximum aggregate number of votes exercisable by any Governors who are Local Authority Associated Persons shall represent a maximum of 19.9% of the total number of votes cast by the Governors on such a resolution and the votes of the other Governors having a right to vote at the meeting will be increased on a pro-rata basis.
129. No person who is a Local Authority Associated Person is eligible to be appointed to the office of Governor unless his appointment to such office is authorised by the local authority to which he is associated.
130. If at the time of either his becoming a Member of the Academy Trust or his first appointment to office as a Governor any Member or Governor was not a Local Authority Associated Person but later becomes so during his membership or tenure as a Governor he shall be deemed to have immediately resigned his membership and/or resigned from his office as a Governor as the case may be.
131. If at any time the number of Governors or Members who are also Local Authority Associated Persons would (but for Articles 127 to 130 inclusive) represent 20% or more of the total number of Governors or Members (as the case may be) then a sufficient number of the Governors or Members (as the case may be) who are Local Authority Associated Persons shall be deemed to have resigned as Governors or Members (as the case may be) immediately before the occurrence of

such an event to ensure that at all times the number of such Governors or Members (as the case may be) is never equal to or greater than 20% of the total number of Governors or Members (as the case may be). Governors or Members (as the case may be) who are Local Authority Associated Persons shall be deemed to have resigned in order of their appointment date the most recently appointed resigning first.

132. The Members will each notify the Academy Trust and each other if at any time they believe that the Academy Trust or any of its subsidiaries has become subject to the influence of a local authority (as described in section 69 of the Local Government and Housing Act).



## Funding Agreement Annex B:

### Admissions Requirements

#### **THE ADMISSION OF PUPILS TO ALL SAINTS' ACADEMY, CHELTENHAM**

##### **GENERAL**

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Academy Trust.
2. The Academy Trust will act in accordance with, and will ensure that the Independent Appeal Panel is trained to act in accordance with, all relevant provisions of the School Admissions Code and the School Admission Appeals Code published by the Department for Children, Schools and Families ("the Codes") as they apply at any given time to maintained schools and with equalities law and the law on admissions as they apply to maintained schools. For this purpose, reference in the Codes or law to "admission authorities" shall be deemed to be references to the governing body of the Academy Trust.
3. Notwithstanding the generality of paragraph 2 of this Annex B, the Academy Trust will take part in the Admissions Forum set up by the LA and have regard to its advice; and will participate in the co-ordinated admission arrangements operated by the LA and the local in-year fair access protocol.
4. Notwithstanding any provision in this Agreement, the Secretary of State may direct the Academy Trust admit a named pupil to the All Saints' Academy, Cheltenham on application from a local authority. Before doing so the Secretary of State will consult the Academy Trust.
- 4A All Saints' Academy, Cheltenham is a joint Catholic/Anglican Academy in the dioceses of Clifton (RC) and Gloucester (CE).
5. The Academy Trust shall ensure that parents will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The Independent Appeal Panel will be independent of the Academy Trust. The arrangements for appeals will comply with the School Admission Appeals Code published by the Department for Children, Schools and Families as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties.
6. The Academy Trust shall prepare guidance for parents about how the appeals process will work and provide parents with a named contact who can answer any enquiries parents may have about the process. The Academy Trust may, if it chooses, enter into an agreement with the LA or any other

organisation for it to recruit, train and appoint appeal panel members, and to arrange for the process to be independently administered and clerked.

### **ANNUAL PROCEDURES FOR DETERMINING ADMISSION ARRANGEMENTS**

#### **Consultation**

7. The Academy Trust shall consult the following parties on the Academy's proposed admission arrangements by 1 March in the Academy Financial Year beginning two years before the Academy Financial Year which the admissions arrangements will be for e.g. March 2009 for admissions in September 2010, ("Determination Year"):

- a) The LA.
- b) The admission forum for the LA.
- c) Any other admission authorities for primary and secondary schools located within the relevant area for consultation set by the LA.
- d) Any other governing body for primary and secondary schools (as far as not falling within paragraph c)) located within the relevant area for consultation.
- e) Affected admission authorities in neighbouring local authority areas.
- f) The RC Diocese of Clifton and the CE Diocese of Gloucester.

Such consultation shall be in line with the requirements of the Codes and relevant admissions legislation, which at the date of this Agreement is section 89 of the School Standards and Framework Act 1998 as amended, and Regulations under that section.

#### **Academy Trust Determination of Admission Arrangements**

8. The Academy Trust will consider comments made by those consulted in accordance with paragraph 7, including any requests to amend the proposed admissions number, before determining the admissions arrangements for the Academy.

9. The Academy Trust will determine the Academy's admission arrangements by 15 April of the Determination Year and notify those consulted in accordance with paragraph 7 what has been determined within 14 days of that decision being made.

#### **Representations about admission arrangements**

10. Where the Academy Trust has determined the Academy's admission arrangements and notified all those bodies that it has consulted in accordance with paragraph 9, if any of those bodies object to the Academy's admission arrangements, including the proposed admissions number, they can make

representations to the Secretary of State. Any representations must be made by 30 June in the Determination Year.

#### **Secretary of State's Consent for Changes to Admissions Arrangements**

11. Where the admissions arrangements determined in a Determination Year in accordance with paragraph 9 are different to the admissions arrangements currently in existence for the Academy, the Academy Trust shall by 30 June in the Determination Year apply to the Secretary of State for him to consent to such amended admissions arrangements.

#### **Secretary of State's Power to Accept, Modify or Reject Admissions Arrangements**

12. Where the Secretary of State has received any representations made in accordance with paragraph 10, the Secretary of State must consult the Academy Trust on such representations. Following such consultation, by 31 July in the Determination Year the Secretary of State may direct that the Academy Trust amends the proposed admissions arrangements for the Academy. The Academy Trust shall comply with any such direction.

13. Where the Secretary of State has received an application made in accordance with paragraph 11 to consent to any amended admissions arrangements, the Secretary of State must by 31 July in the Determination Year either approve the amended admissions arrangements or direct that the amended admissions arrangements are not implemented or must be modified. The Academy Trust must comply with any such direction.

#### **Publication of Admission Arrangements**

14. The Academy Trust shall each Determination Year publish the All Saints' Academy, Cheltenham's agreed admission arrangements by:

- a) copies being sent to the persons consulted in paragraph 7;
- b) copies being sent to primary and secondary schools in the LA's area;
- b) copies being sent to the offices of the LA;
- c) copies being made available without charge on request from the Academy;
- d) copies being sent to public libraries in the area of the LA for the purposes of being made available at such libraries for reference by parents and other persons.

15. The published admissions arrangements will set out:

- a) the name and address of All Saints' Academy, Cheltenham, and contact details;



- b) a summary of the admissions policy, including oversubscription criteria and any arrangements for post-16 admission;
- c) a statement of any religious affiliation if relevant;
- d) numbers of places and applications for those places in the previous year; and
- e) arrangements for hearing appeals.

**Proposed Changes to Admission Arrangements by All Saints' Academy, Cheltenham, After Arrangements Have Been Published**

16. Subject to paragraph 17, once the Academy's admission arrangements have been determined for a particular year and published, the Academy Trust will not make any change to such arrangements unless there is a major change of circumstances and the following procedures have been followed:

- a) the Academy Trust has consulted those who were consulted under paragraph 7 above on the proposed variation;
- b) following such consultation, the Academy Trust has applied to the Secretary of State to approve the change setting out:
  - i) the proposed change;
  - ii) reasons for wishing to make such change;
  - iii) any comments or objections to the proposal from those consulted; and
- c) following such application, the Secretary of State has provided his consent to the proposed variation.

17. The Academy Trust shall following the prior written agreement or direction of the Secretary of State vary the Academy's admissions arrangements where such changes are necessary to ensure compliance with the relevant provisions of admissions law or the Codes as they apply to maintained schools. Such changes may be made at any time.

18. Any changes to the Academy's admission arrangements brought about through the variation processes in paragraphs 16 or 17 above must be published within the Academy's prospectus and website (if it has one) and be communicated within 7 days to those persons who must be consulted under paragraph 7.

19. The Academy Trust must make arrangements for a parent of a child who has attained the age of two but is not above compulsory school age and who has been, is or will be eligible to apply to be admitted to the Academy to make representations to the Secretary of State that any aspect of the

Academy's admission arrangements does not comply with the relevant provisions of admissions law or the Codes as they apply to maintained schools.

20. Where a representation is made in accordance with paragraph 19, the Secretary of State may, after consulting the Academy Trust, direct that the Academy Trust modify its arrangements for the admission of pupils to the Academy so that they comply with the relevant provisions of admissions law and the Codes as they apply to maintained schools. The Academy Trust must comply with any such direction.

21. Records of applications and admissions to the Academy shall be kept by the Academy Trust for a minimum period of ten years and shall be open for inspection by the Secretary of State.

### **PROCEDURE FOR ADMITTING PUPILS TO THE ACADEMY**

#### **Admissions Number**

22. The Academy Trust has the following agreed admissions numbers for the Academy for the year 2011/2012 and, subject to any changes approved or required by the Secretary of State, for subsequent years:

- a) 180 pupils for pupils in Year 7.
- b) All Saints' Academy, Cheltenham has an agreed admission number of 125 pupils to year 12 minus those eligible pupils progressing from the Academy's own year 11. All Saints' Academy, Cheltenham will accordingly provide for the admission or progression of 125 pupils to the sixth form if sufficient requests for progression or applications for entry are received. If the admission number 125 is met through internal transfers, no external applicants will be admitted.

23. In any specific year, the Academy Trust may set a higher admission number than All Saints' Academy, Cheltenham's agreed admission number for an applicable year group. Before setting an admission number higher than its agreed admission number, the Academy Trust will consult those listed at paragraph 7. Pupils will not be admitted in any year group above the published admissions number for that year group unless exceptional circumstances apply and such circumstances shall be reported to the Secretary of State.

#### **Process of Application**

24. Arrangements for applications for places at All Saints' Academy, Cheltenham will be made in accordance with the LA's co-ordinated admission arrangements and will be made on the Common Application Form provided and administered by the relevant local authority.

25. The Academy Trust will use the following timetable for applications to the All Saints' Academy, Cheltenham each year (exact dates within the months may vary from year to year) which, whenever possible, will fit in with

the common timetable agreed by the Gloucestershire LA Admissions Forum.

- a) By September - The Academy Trust will publish in All Saints' Academy, Cheltenham's prospectus information about the arrangements for admission, including oversubscription criteria, for the following September (e.g. in September 2007 for admission in September 2008). This will include details of open evenings and other opportunities for prospective pupils and their parents to visit the school. The Academy Trust will also provide information in relation to All Saints' Academy, Cheltenham to the Gloucestershire LA for inclusion in the composite prospectus, as required;
- b) September/October - The Academy Trust will provide opportunities for parents to visit All Saints' Academy, Cheltenham;
- c) October/November – Common Application Form to be completed and returned to the Gloucestershire LA to administer;
- d) Gloucestershire LA sends All Saints' Academy, Cheltenham's applications to the Academy Trust;
- e) Academy Trust sends list of pupils to be offered places at All Saints' Academy, Cheltenham to Gloucestershire LA;
- f) February - Gloucestershire LA applies agreed scheme for own schools, informing other LAs of offers to be made to their residents.
- g) 1<sup>st</sup> March offers made to parents.

### **Consideration of Applications**

25. The Academy Trust will consider all applications for places at All Saints' Academy, Cheltenham. Where fewer than the published admission number(s) for the relevant year groups are received, the Academy Trust will offer places at the All Saints' Academy, Cheltenham Academy to all those who have applied.

### **Procedures where All Saints' Academy, Cheltenham is oversubscribed**

#### **Secondary phase oversubscription criteria**

#### **Admissions to Y7**

27. Where the number of applications for admission is greater than the published admission number, applications will be considered against the criteria set out below. After the admission of pupils with statements of Special Educational Needs where All Saints' Academy, Cheltenham is named on the statement, the criteria will be applied in the order in which they are set out below:

- a) children in public care;



b) pupils as per the table set out below

<p><b>1. CHURCH OF ENGLAND</b></p> <p>35% of remaining places</p>	<p><b>2. COMMUNITY</b></p> <p>30% of remaining places</p>	<p><b>3. CATHOLIC</b></p> <p>35% of remaining places:</p>
<p>To qualify within this category all children will be:</p> <p>(a) Baptised members of the Church of England (see note 5); and/or</p> <p>(b) their parents and carers are baptised members of the Church of England</p> <hr/> <p>Priority order:</p> <ol style="list-style-type: none"> <li>1. Qualifying children whose permanent address is within the Cheltenham Deanery with priority being given to those whose parents are on the electoral roll of a CofE church within the Cheltenham Deanery (see Notes 1, 2 &amp; 5 below)</li> <li>2. Qualifying children who are pupils attending any of the 8 CofE Primary/Junior Schools in Cheltenham (See Note 7) at the time of application whose permanent address is within Cheltenham Deanery (see Notes 1 and 2 below)</li> <li>3. Qualifying children who are siblings of pupils in attendance at the Academy at the time of admission.</li> <li>4. Baptised Anglicans living outside the Cheltenham Deanery by distance (see criterion 27(d) below)</li> </ol>	<p>There is no faith qualification for this category.</p> <hr/> <p>Priority order:</p> <ol style="list-style-type: none"> <li>1. Siblings (children living in the same household on a permanent basis) of pupils in attendance at the Academy at the time of admission. (see Note 2 &amp; 3 below)</li> <li>2. Other applicants by distance (see criterion 27(c) below)</li> </ol>	<p>To qualify within this category all children will be Baptised Roman Catholics (see note 4)</p> <hr/> <p>Priority order:</p> <ol style="list-style-type: none"> <li>1. Qualifying children living within the Cheltenham Deanery. (see Notes 1, 2 &amp; 4 below)</li> <li>2. Qualifying children who attend St Gregory the Great or St Thomas More schools at the time of application</li> <li>3. Qualifying children who are siblings of pupils in attendance at the Academy at the time of admission.</li> <li>4. Baptised Catholics living outside the Cheltenham Deanery by distance (see criterion 27(c) below).</li> </ol>

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c) In the event of oversubscription in any criterion, admission would be on the basis of closest proximity to the school. This would be measured in a straight line distance from the front door of the child's home to the Academy's front gates, using the LA's computerised measuring system.

**Note 1:**

The Deaneries are defined by maps found at the school office of Christ College, the predecessor school, and, from September 2011, at the office of All Saints' Academy. The maps will also be published annually in the Academy's prospectus, be uploaded to its website and be published within Gloucestershire's Composite Admissions Prospectus.

**Note 2:** Proof of residence is required and should take the form of a copy of a current utility bill or bank statement.

**Note 3:** Children are 'siblings' if they are full, half or adoptive brothers or sisters or if they are children living in the same household on a permanent basis. Children will not be considered siblings where the older child is attending the Academy as a Year 12 or 13 student in the year of entry.

**Note 4:** 'Catholic' children need their application to be supported by a copy of their Baptismal certificate.

**Note 5:** 'Anglican' children need their application to be supported by a Certificate of Baptism or Confirmation or confirmation that the parents/carers are on the CE Church electoral roll.

**Note 6:**

- a. If Catholic places remain once criterion 4 (column 3) has been applied, these will be offered first to Community applicants and then if any places remain, to CE applicants using the 'Community' oversubscription criteria.
- b. If Anglican places remain once criterion 4 (column 1) has been applied, these will be offered to Community applicants and then if any places remain, to Catholic applicants using the 'Community' oversubscription criteria.
- c. If Community places are undersubscribed and faith places are oversubscribed, 'faith' applicants who have been unable to obtain a place under the CE or Catholic criteria will be considered alongside other applicants for a community place against the community oversubscription criteria.

**Note 7:** The relevant Anglican Schools are as follows:

- a. Christ Church C of E Primary, Cheltenham
- b. St Mark's Junior, Cheltenham
- c. Leckhampton Primary, Cheltenham
- d. St James' Primary, Cheltenham
- e. St John's Primary, Cheltenham
- f. Holy Trinity Primary, Cheltenham
- g. Holy Apostles' Primary, Cheltenham
- h. Prestbury St Mary's Junior, Cheltenham

## **Post 16 admission criteria and oversubscription criteria**

28. The Academy Trust will publish specific criteria in relation to minimum academic entrance requirements for admission to the sixth form.

These academic criteria will be consulted upon in accordance with paragraph 7 and published annually, once determined in accordance with paragraph 9;

- within the academy's prospectus;
- within Gloucestershire County Council's composite admissions prospectus; and
- be uploaded onto the Academy's website (if it has one)

These criteria are the same for internal and external transfers. Where, following the allocation of places to the Academy's own year 11 pupils who meet these entry criteria, the number of external applications exceeds the number of post-16 places available and after the admission of pupils with statements of Special Educational Needs where All Saints' Academy is named on the statement, the criteria will be applied in the order in which they are set out below:

- a) Children in public care
- b) Other applicants meeting entry requirements.

**Note:** Where there is oversubscription on any of these criteria, applicants closest to the Academy will have precedence (see para 27(c) above)

29. There will be a right of appeal to an Independent Appeals Panel for internal pupils refused transfer and external applicants refused admission.

## **Operation of waiting lists**

30. Subject to any provisions regarding waiting lists in the LA's co-ordinated admission scheme, the Academy will operate a waiting list [for each year group]. Where in any year All Saints' Academy, Cheltenham receives more applications for places than there are places available, a waiting list will operate until a month after the start of the school year. This will be maintained by the Academy Trust and it will be open to any parent to ask for his or her child's name to be placed on the waiting list, following an unsuccessful application.

31. Children's position on the waiting list will be determined solely in accordance with the oversubscription criteria set out in paragraph 27, or for post-16, paragraph 28 above. Where places become vacant they will be allocated to children on the waiting list in accordance with the oversubscription criteria.



**Arrangements for Admitting Pupils to Other Year Groups, Including To Replace any Pupils Who have Left the All Saints' Academy**

32. Subject to any provisions in the LA's co-ordinated admission arrangements relating to applications submitted for years other than the normal year of entry, the Academy Trust will consider all such applications and if the year group applied for has a place available, admit the child unless one of the permitted reliefs apply. If more applications are received than there are places available, the oversubscription criteria in paragraph 27 or for post-16 places, paragraph 28 shall apply. Parents whose application is turned down shall be entitled to appeal.

**Arrangements for Admission of pupils as the All Saint's Academy, Cheltenham Builds to its Full Capacity**

33. All Saints' Academy Cheltenham will open on 1 September 2011 with a Published Admission Number relating solely to pupils in Year 7 and, where relevant, Year 12. Pupils in subsequent Years will have been transferred automatically from the predecessor school, Christ College, which will close on 31 August 2011.

## **Funding Agreement Annex B(i): Admissions Requirements**

### **An annex to sit alongside the Admissions Policy Document**

#### **THE ADMISSION OF PUPILS TO ALL SAINTS' ACADEMY, CHELTENHAM, hereinafter referred to as 'the Academy'**

1. The Academy will act in accordance with, and will ensure that the Independent Appeal Panel is trained to act in accordance with, all relevant provisions of the statutory codes (the School Admissions Code and the School Admission Appeals Code) as they apply at any given time to maintained schools with equalities law and the law on admissions as it applies to maintained schools. Reference in the codes to admission authorities shall be deemed to be references to the governing body of the Academy. In particular, the Academy will take part in the Admissions Forum set up by Gloucestershire LA and have regard to its advice; and will participate in the co-ordinated admission arrangements operated by Gloucestershire LA and the local in year fair access protocol.

2. Pupils will be admitted to the Academy in accordance with the detailed admission arrangements described in the Admissions Policy Document. Changes to the Admissions Policy Document will require the approval of the Secretary of State.

#### **Arrangements for appeals panels**

3. Parents will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy. The Appeal Panel will be independent of the Academy. The arrangements for Appeals will comply with the School Admission Appeals Code published by the Department for Children, Schools and Families as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties. The Academy should prepare guidance for parents about how the appeals process will work and provide parents with a named contact who can answer any enquiries parents may have about the process. The Academy may, if it chooses, enter into an agreement with the local authority for it to recruit, train and appoint appeal panel members, and to arrange for the process to be independently administered and clerked.

### **II: ANNUAL PROCEDURES FOR DETERMINING ADMISSION ARRANGEMENTS**

#### **Consultation**

4. The Academy shall consult by 1 March each year on its proposed admission arrangements with relevant parties in line with the requirements of the School Admissions Code and relevant admissions legislation. (At the date of this Agreement, section 89 of the School Standards and Framework Act 1998 as amended, and regulations under that section.)



### **Determination and publication of admission arrangements**

5. Following consultation, the Academy will consider comments made by those consulted. The Academy will then determine its admission arrangements by 15 April of the determination year (e.g. April 2009 for September 2009 admissions) and notify those consulted what has been determined within 14 days.

### **Publication of admission arrangements**

6. The Academy will publish its admission arrangements each year once these have been determined in accordance with the arrangements described in the Admissions Policy Document.

### **Representations about admission arrangements**

7. Where any of those bodies that were consulted, or that should have been consulted, make representations to the Academy about its admission arrangements, the Academy will consider such representations before determining the admission arrangements. Where the Academy has determined its admission arrangements and notified all those bodies whom it has consulted and any of those bodies object to the Academy's admission arrangements they can make representations to the Secretary of State. These representations must be made by 30 June. The Secretary of State will consider the representation and in so doing will consult the Academy. Where he judges it appropriate, the Secretary of State may direct the Academy to amend its admission arrangements.

8. Those consulted have the right to ask the Academy to increase its proposed Published Admissions Number for any year. Where such a request is made, but agreement cannot be reached locally, they may ask the Secretary of State to direct the Academy to increase its proposed Published Admissions Number. The Secretary of State will consult the Academy and will then determine the Published Admissions Number.

9. In addition to his powers in paragraphs 7 and 8 above, the Secretary of State may direct changes to the Academy's proposed admission arrangements and to the proposed Published Admissions Number.

### **Objections by Parents**

9A. The Academy must make arrangements for parents of qualifying children to object to the Secretary of State on the grounds that any aspect of the Academy's admission arrangements does not comply with admissions law or does not comply with the School Admissions Code, the School Admission Appeals Code or the Admissions Policy document.

For this purpose a qualifying child is one who has attained the age of two but is not above compulsory school age, who has been, is or will be eligible to apply to the Academy.

9B. Where an objection is duly made, the Secretary of State will consider the objection and notify the Academy of his decision. The Academy must comply with a decision of the Secretary of State.

**Proposed changes to admission arrangements by the Academy after arrangements have been published**

10. Once the admission arrangements have been determined for a particular year and published, the Academy will propose changes only if there is a major change of circumstances. In such cases, the Academy must notify those consulted under paragraph 4 above of the proposed variation and must then apply to the Secretary of State setting out:

- a) the proposed changes;
- b) reasons for wishing to make such changes;
- c) any comments or objections from those entitled to object.

10A. The Academy may also vary its arrangements at any time, without consultation but with the prior agreement of the Secretary of State, where such changes are necessary to ensure compliance with the provisions of admissions law, the School Admissions Code or the School Admission Appeals Code.

10C. Any changes to admission arrangements brought about through the variation processes in paragraphs 10 and 10A above must be published within the Academy's prospectus and website (if it has one) and be communicated to the LA and local admission forum.

**Need to secure Secretary of State's approval for changes to admission arrangements**

11. Except in the circumstances described in paragraphs 10 and 10A, the Secretary of State will consider applications from the Academy to change its admission arrangements only when the Academy has notified and consulted on the proposed changes as outlined at 4 above.

12. Where the Academy has consulted on proposed changes the Academy must secure the agreement of the Secretary of State before any such changes can be implemented. The Academy must seek the Secretary of State's approval in writing, setting out the reasons for the proposed changes and passing to him any comments or objections from other admission authorities/other persons.

13. The Secretary of State can approve, modify or reject proposals from the Academy to change its admission arrangements.

14. Records of applications and admissions shall be kept by the Academy

for a minimum period of ten years and shall be open for inspection by the Secretary of State.



**Funding Agreement Annex C:  
Arrangements for pupils with SEN and disabilities**

**ARRANGEMENTS FOR PUPILS WITH SEN AND DISABILITIES  
AT ALL SAINTS' ACADEMY, CHELTENHAM**

**DUTY TO HAVE REGARD TO THE CODE OF PRACTICE AND  
OTHER GUIDANCE**

1. The Academy shall have regard to the Special Educational Needs Code of Practice (2001) and any guidance issued by the Secretary of State relating to sections 316 and 316A of the Education Act 1996. Any changes to be made to the provisions set out in this document must be approved in advance by the Secretary of State.

**Duties in relation to pupils with SEN**

2. The governors of the Academy shall designate a person, who may be the headteacher, the chair of governors or another governor as appropriate, who shall be the responsible person for the purposes of the following duties in relation to pupils with SEN.
3. The governors of the Academy shall:
  - use their best endeavours, in exercising their functions in relation to the school, to secure that, if any registered pupil has special educational needs, the special educational provision which the pupil's learning difficulty calls for is made;
  - secure that, where the responsible person has been informed by the local education authority that a registered pupil has special educational needs, those needs are made known to all who are likely to teach the pupil;
  - secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs; and
  - consult the local education authority and the governing bodies of other schools in the area, to the extent that this is necessary for co-ordinating provision for pupils with SEN.
4. Where a child who has special educational needs is being educated in the Academy, those concerned with making special educational provision for the child shall secure, so far as is reasonably practicable and is compatible with:
  - (a) the child receiving the special educational provision which his learning difficulty calls for,
  - (b) the provision of efficient education for the children with whom he will be educated,
  - (c) the efficient use of resources and
  - (d) that the child engages in the activities of the school together with children who do not have SEN.

5. The Academy prospectus shall include details of the governing body's policy for pupils with SEN and in particular shall include the information specified in Schedule 1 to the Education (Special Educational Needs) (Information) Regulations 1999 as amended or re-enacted from time to time. It shall also include details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Disability Discrimination Act 1995).

## **Admissions**

6. The Academy shall ensure that pupils with SEN are admitted on an equal basis with others in accordance with its admissions policy.
7. Where a local education authority proposes to name the Academy in a statement of SEN made in accordance with section 324 of the Education Act 1996, the Academy shall consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children; and where no reasonable steps may be made to secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children, the Academy shall have regard to the relevant guidance issued by the Secretary of State to maintained schools.
8. In the event of any disagreement between the Academy and the local education authority over the proposed naming of the Academy in a statement, the Academy may ask the Secretary of State to determine whether the Academy should be named. The Secretary of State's determination shall, subject only to any right of appeal which any parent or guardian of the child may have to the Special Educational Needs and Disability Tribunal (SENDIST), be final.
9. If a parent or guardian of a child in respect of whom a statement is maintained by the local education authority appeals to SENDIST either against the naming of the Academy in the child's SEN statement or asking the Tribunal to name the Academy, then the decision of the Tribunal on any such appeal shall be binding and shall, if different from that of the Secretary of State under paragraph 7 above, be substituted for the Secretary of State's decision.
10. Where the Academy has consented to be named in a child's statement of SEN, or the Secretary of State or SENDIST have determined that it should be named, the Academy shall admit the child notwithstanding any provision of Annex 2 of this agreement.



**Funding Agreement Annex D:**  
**Serious incidents of misbehaviour leading to fixed period or permanent exclusion**

**POLICY FOR ALL SAINTS' ACADEMY, CHELTENHAM**

**Serious incidents of misbehaviour leading to fixed period or permanent exclusion**

1. In discharging its duty the Academy Trust will have regard and will ensure that the Independent Appeal Panel has regard to the Secretary of State's guidance on exclusions for maintained schools in accordance with any written directions from the Secretary of State on the interpretation of such guidance for the purpose of this annex.
2. At the date of this agreement, the Secretary of State's guidance on exclusions is called "Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units", which is published on the DCSF website at: <http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/guidance/>. The title, contents and publication site of this guidance may be subject to change and the Academy Trust will have regard to the guidance as it stands at any given time.

**Constitution and conduct of independent appeal panels**

3. In addition to the obligations under paragraphs 1 and 2, the Academy Trust will be responsible for carrying out the functions of the Local Authority, as specified in the guidance, for the management of the appeal procedure. The Appeal panel must be impartial and constituted in accordance with the provisions of the guidance detailing the composition of the Appeal Panel. The Academy Trust will arrange suitable training for appeal panel members and clerks.
4. The appeal panel's decision is final and binding on the Academy Trust. Decisions of appeal panels are in principle amendable to judicial review on the application of a parent. A parent may not, however, appeal to the Commissioner for Local Administration (the Local Government Ombudsman) about maladministration because the Commissioner's remit is limited to considering the conduct of appeal panels constituted by Local Authorities.

**Notification of permanent exclusions**

5. Where a pupil is excluded permanently, the Academy Trust must ensure that the pupil's home Local Authority is notified at the earliest possible opportunity.

## DEED OF VARIATION

The parties to this Deed are:

(1) The Secretary of State for Children, Schools and Families ("the Secretary of State"),

- and -

(2) All Saint's Academy, Cheltenham a charitable company incorporated in England and Wales with registered number 06831538 ("the Academy").

together referred to as the "Parties"

### INTRODUCTION

- A. The Parties entered into a funding agreement dated 25 September 2009 ("**Funding Agreement**") relating to the establishment, maintenance and funding of an independent school known as All Saint's Academy, Cheltenham.
- B. The Parties now wish to vary and amend the terms of the Funding Agreement and wish to record their agreement as to such variations/amendments to the Funding Agreement by this Deed.

### LEGAL AGREEMENT

- 1. Any word or phrase used in this Deed shall, if that word or phrase is defined in the Funding Agreement, bear the meaning given to it in the Funding Agreement.
- 2. The Secretary of State and the Academy agree that with effect from the date of this Deed the Funding Agreement shall be amended in accordance with the Schedule to this Deed. The changes are shown in the conformed copy of the Funding Agreement as set out in the Annex to this Deed.
- 3. As varied by this Deed, the Funding Agreement shall remain in full force and effect.

EXECUTED AND DELIVERED AS A DEED by the Parties on the 7<sup>th</sup> day  
of April 2000 2010



The Corporate Seal of the Secretary of State for Children, Schools and Families hereunto affixed is authenticated by: [REDACTED]

.....  
Duly Authorised by the Secretary of State for Children, Schools and Families

All Saint's Academy,  
Cheltenham

acting by two directors or a  
director and a secretary

[REDACTED]  
Director

Print name [REDACTED]

.....  
Director/Secretary

Print name [REDACTED]

## **The Schedule**

### **Amendments to the Funding Agreement**

1. In the contents section of the Funding Agreement the wording  
  
"Serious incident of misbehaviour leading to fixed period Learning Behaviour policy (including discipline and or arrangements for fixed term and permanent exclusions) for the Academy"  
  
shall be deleted and replaced with  
  
"Serious incidents of misbehaviour leading to fixed period of permanent exclusion".
2. Clause 3(f) of the Funding Agreement shall be deleted and replaced with:  
  
"GAG" – clause 61;
3. the definition of "Business Day" contained within clause 4 of the Funding Agreement shall be deleted and replaced with:  
  
"Business Day" means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday with the meaning given to that expression in the Banking and Financial Dealings Act 1971;
4. Clause 14 of the Funding Agreement shall be deleted and replaced with:  
  
"The Academy will be governed by a governing body ("the Governing Body") who are the Directors of the company constituted under the Memorandum and Articles of the Academy Trust."
5. Clause 15 of the Funding Agreement shall be deleted and replaced with:  
  
"The Governing Body shall have regard to (but for the avoidance of doubt shall not be bound by) any guidance as to the governance of academies that the Secretary of State may publish."
6. Clause 18 of the Funding Agreement shall be deleted and replaced with:  
  
"The Academy Trust will in respect of the Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained



school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by an LA and are registered pupils at the school. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Governing Body of the Academy Trust."

7. Clause 19 of the Funding Agreement shall be deleted and replaced with

"The Academy Trust shall provide to the Secretary of State a School Development Plan for the Academy each Academy Financial Year in accordance with a format and timetable to be advised by the Secretary of State. The School Development Plan shall, in particular:

- (a) in accordance with a format and timetable to be advised by the Secretary of State, set out plans for ensuring that all pupils are supported to reach the highest standards of which they are capable; and
- (b) describe the Academy Trust's proposals for the Academy to work with other schools and with the wider community."

8. Clause 20 of the Funding Agreement shall be deleted and replaced with

"The Academy Trust shall in relation to the Academy set targets each Academy Financial Year in areas which are prescribed for maintained schools in regulations made by the Secretary of State under section 19 of the Education Act 1997 (or any statutory amendment or re-enactment of that section) or such variation of those targets as may be agreed between the Academy Trust and the Secretary of State. For the avoidance of doubt such targets shall solely be minimum areas required to enable the Secretary of State to monitor performance, and it shall remain open to the Academy Trust to set targets for the Academy in areas that are additional to those that are so prescribed."

9. Clause 27 of the Funding Agreement shall be deleted and replaced with

"Reasonable notice shall be given to the Secretary of State of any meeting of the Governing Body or any committee or sub-committee thereof (including any interview or appointments panel), at which the appointment of a Principal is being considered and a representative of the Secretary of State shall be entitled to attend and speak at any such meeting whether or not they are also entitled to attend such meeting by virtue of clause 135 of this Agreement. Advice given by any such representative shall be taken into account by (but, for the avoidance of doubt, is not binding on) those persons considering the appointment of the Principal before a decision is made."



10. Clause 32 of the Funding Agreement shall be deleted and replaced with:

"In making arrangements under clauses 29-30 the Academy Trust shall have regard to any guidance issued from time to time by the Secretary of State or the Qualifications and Curriculum Development Agency (QCDA)."

11. After clause 42 of the Funding Agreement the following clause shall be inserted:

**"Careers Education: Information and Advice**

42A The Academy Trust shall ensure that in the provision of Careers Education to its pupils the Academy provides impartial advice in accordance with sections 43, 45 and 45A of the Education Act 1997 as amended by section 81 of the Education and Skills Act 2008. "

12. Clause 43 shall be deleted and replaced with the following:

"The Secretary of State will notify the QCDA (Qualifications and Curriculum Development Agency) about the Academy."

and references in clauses 45, 46 and 47 to the NAA and references in clauses 40 and 48 to the Qualifications and Curriculum Authority shall be read and construed as being references to the QCDA.

13. Clause 53 shall be amended such that the wording "but the Academy Trust shall otherwise fund the cost of such school lunches from its GAG. " shall be added to the end of the clause.
14. Clause 54 shall be amended such that the wording "to be funded out of the Academy Trust's GAG" shall be added to the end of the clause.
15. Clause 55 shall be deleted and replaced with the following:
- "55) All food and drink provided by or on behalf of the Academy shall comply with legislation governing the provision of food and drink in maintained schools as this applies from time to time. In particular, the Academy Trust shall ensure that school meals (breakfasts, lunches, or other meals) and food and drink available on the Academy's premises through other outlets such as tuck shops and vending machines comply, as a minimum, with the relevant standards set out in regulations.
16. At clause 58, the reference to Schedule 3 of the Education (School Information) (England) Regulations 2002 (SI 2002/2897) shall be amended

as a reference to Schedule 3 of the Education (School Information) (England) Regulations 2008.

17. Clause 77(a) of the Funding Agreement shall be deleted and replaced with:

Where the Academy opens with an intake representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the Academy Financial Years before all age groups are present at their planned size (the "Start-up Period") because of a lack of economies of scale. The Secretary of State undertakes to pay an appropriately larger GAG in the Start-up Period than would be justified solely on the basis of the methods set out in clauses 70-76, in order to enable the Academy to operate effectively. The Academy Trust will make a bid to the Secretary of State for this addition to GAG based upon need and providing appropriate supporting evidence;

18. .Clauses 93 and 94 shall be deleted and replaced with the following:

"93) The Academy Trust shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.

94) In relation to the use of grant paid to the Academy Trust by the Secretary of State, the Academy Trust shall abide by the requirements of and have regard to the guidance in the Academies Financial Handbook published by the DCSF and amended from time to time, which sets out in detail provisions for the financial management of the Academy including guidance on financial systems and controls and accounting and reporting requirements, in so far as these are not inconsistent with any accounting and reporting requirements and guidance that it may be subject to by virtue of its being a charity."

19. Clause 96(c) shall be deleted and replaced with

"in addition to the obligation to fulfil the statutory requirements referred to in sub-clauses d) and g) below, financial statements are published at the end of each Academy Financial Year in such form and manner as the Secretary of State may reasonably direct and a copy sent to him by 31 December each Academy Financial Year. These should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Academy Trust's affairs and that the grants were used for the purposes intended;"

20. Clause 96 (g) shall be deleted and replaced with

"the Academy Trust files the Directors' report and accounts together with a copy of the scrutiny report and its Annual Return with the Charity Commission as required by charity law and in accordance with the relevant Statement of Recommended Practice;"

21. Clause 104 shall be deleted and replaced with

"The Academy Trust shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:

- a) except such as are given in normal contractual relations, give any guarantees, indemnities or letters of comfort;
- b) write off any debts or liabilities owed to it above a value to be set out in the annual letter of funding, nor offer to make any ex gratia payments;
- c) make any sale or purchase of freehold property; or
- d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.

104A) The Academy Trust shall provide 30 days notice to the Secretary of State, whether or not the circumstances require the Secretary of State's approval, of its intention to:

- a) give any guarantees, indemnities or letters of comfort;
- b) write off any debts owed to it or offer to make any ex gratia payments;
- c) make any sale or purchase of freehold property; or
- d) grant or take up any leasehold or tenancy agreement for a term exceeding three years."

22. Clause 106 shall be deleted and replaced with

"It is the responsibility of the Academy Trust to ensure that the Academy balances its budget from Academy Financial Year to Academy Financial Year. For the avoidance of doubt, this does not prevent the Academy Trust from:



- a) carrying a surplus from one Academy Financial Year to the next;  
or
- b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or
- c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that the Academy balances its overall budget from Academy Financial Year to Academy Financial Year."

23. Clause 107 shall be amended and replaced with

"The Academy Trust shall not borrow against or so as to put at risk property or assets funded (whether in whole or in part) by the Secretary of State without specific approval of the Secretary of State, such approval may only be granted in limited circumstances. The Academy Trust shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval by the Academy Trust in General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.

107A) The Academy Trust shall provide 30 days notice to the Secretary of State of its intention to borrow, whether or not such borrowing requires the Secretary of State's approval under clause 107 above.

24. Clause 112 shall be deleted and replaced with:

Except with the consent of the Secretary of State and such consents as the Charity Commission may require, the Academy Trust shall not dispose of assets funded (whether in whole or in part) by the Secretary

of State for a consideration less than the best price that can reasonably be obtained, such consent not to be unreasonably withheld or delayed.

112A) The Academy Trust shall provide 30 days notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such borrowing requires the Secretary of State's consent under clause 112 above.

25. All references in clauses 114, 115(a) and 118 of the Funding Agreement to "clauses 13-61" shall be deleted and replaced with "clauses 13-59B".

26. Clause 121 (b) shall be deleted and replaced with  
"appoint such Further Governors to the Academy Trust as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement."



27. Clause 133(i) shall be deleted and replaced with  
"levels of authorised and unauthorised absence;"

**Schedule 2**  
**Amended Funding Agreement**

# **Mainstream academy and free school: single funding agreement**

**March 2018 v7**

## Contents

Contents	2
SUMMARY	5
<b>1 ESTABLISHING THE ACADEMY</b>	<b>10</b>
Introduction to this agreement	10
General Obligations of the Academy Trust	13
Academy opening date	14
Governance	14
<b>2. RUNNING OF THE ACADEMY</b>	<b>15</b>
Length of school day and year	15
Teachers and staff	15
Pupils	17
School meals	17
Pupil Premium	18
Charging	18
Admissions	19
Exclusions	21
Curriculum	22
Assessment	25
<b>3. GRANT FUNDING</b>	<b>26</b>
Recurrent Expenditure grants	26
Capital Grant	27
General Annual Grant (GAG)	29
Calculation of GAG	31

	<b>Earmarked Annual Grant (EAG)</b>	<b>32</b>
	<b>Arrangements for paying GAG and EAG</b>	<b>32</b>
	<b>Other relevant funding</b>	<b>34</b>
<b>4.</b>	<b>FINANCIAL AND ACCOUNTING REQUIREMENTS</b>	<b>34</b>
	<b>General</b>	<b>34</b>
	<b>Application of the Academies Financial Handbook</b>	<b>35</b>
	<b>Budgeting for funds</b>	<b>35</b>
	<b>Carrying forward of funds</b>	<b>36</b>
	<b>Annual accounts and audit</b>	<b>37</b>
	<b>Keeping financial records</b>	<b>38</b>
	<b>Access to financial records</b>	<b>38</b>
	<b>Acquiring and disposing of Publicly Funded Assets</b>	<b>38</b>
	<b>Retaining proceeds from the disposal of capital assets</b>	<b>39</b>
	<b>Transactions outside the usual planned range</b>	<b>39</b>
	<b>Borrowing</b>	<b>40</b>
<b>5.</b>	<b>LAND CLAUSES</b>	<b>40</b>
<b>6.</b>	<b>COMPLAINTS</b>	<b>44</b>
<b>7.</b>	<b>TERMINATION</b>	<b>46</b>
	<b>Termination by either party</b>	<b>46</b>
	<b>Termination Warning Notice</b>	<b>46</b>
	<b>Termination by the Secretary of State after inspection</b>	<b>47</b>
	<b>Termination by the Secretary of State</b>	<b>47</b>
	<b>Change of Control</b>	<b>50</b>
	<b>Funding and admission during notice period</b>	<b>51</b>



<b>Effect of Termination</b>	51
<b>8. OTHER CONTRACTUAL ARRANGEMENTS</b>	53
<b>Information</b>	53
<b>Access by the Secretary of State's Officers</b>	53
<b>Notices</b>	54
<b>General provisions</b>	55
<b>ANNEXES</b>	57
<b>9. ADMISSION OF CHILDREN AND YOUNG PEOPLE WITH EDUCATION, HEALTH AND CARE PLANS</b>	57
<b>10. ADMISSION OF CHILDREN WITH A STATEMENT OF SPECIAL EDUCATIONAL NEEDS</b>	57

## SUMMARY

### Information about the Academy:

<b>Name of Academy Trust</b>	All Saints' Academy, Cheltenham
<b>Company number</b>	06831538
<b>Name of academy</b>	All Saints' Academy
<b>Opening date</b>	1 September 2011
<b>Type of academy (indicate whether academy or free school)</b>	Mainstream Academy
<b>Religious designation</b>	Church of England
<b>Wholly or partly selective</b>	N/A
<b>Name of predecessor school (where applicable)</b>	N/A
<b>Capacity</b>	1150
<b>Age range</b>	11-19
<b>Number of sixth form places</b>	220
<b>Number of boarding places</b>	N/A
<b>SEN unit / Resource provision</b>	N/A
<b>Land arrangements (Version 1-8 or other)</b>	Version 2
<b>Address and title number of Land</b>	All Saints' Academy, Blaisdon Way, Cheltenham, Gloucestershire GL51 0WH  Title number: GR421753
<b>Contact details for the Chair of Trustees Chair of Board of Charity Trustees</b>	Chair of Trustees All Saints' Academy, Blaisdon Way, Cheltenham, Gloucestershire GL51 0WH

<b>Name of Academy Trust</b>	All Saints' Academy, Cheltenham

**Please confirm which clause variations have been applied or marked as 'Not used'**

Clause No	Descriptor	Applied	Not used
1.19	Only applies to free schools and new provision academies		X
2.9.A	Clause applies where an academy was previously a VC or foundation school designated with a religious character		X
2.12, 2.13	Only applies where the academy has an SEN unit		X
2.23	Only applies where there was a predecessor independent school		X
2.24	Only applies where the academy provides boarding		X
2.26	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies	X	
2.32	Clause applies only to academies and free schools designated with a religious character	X	
2.33	Clause applies only to academies that were formerly wholly selective grammar schools		X
2.34	Clause applies only to academies that were formerly partially selective grammar schools		X
2.39	Clause applies to free schools and new provision academies designated with a religious character		X
2.50	Clause only applies where the academy is designated with a religious character	X	
2.51	Clause only applies where the academy has not been designated with a religious character		X
2.52	Clause applies where an academy was previously a VC school or foundation school designated with a religious character		X
2.52c)	Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than 'Christian'		X
3.16 – 3.21	Option 1 applies to converter and sponsored academies: if used delete option 2	X	

Clause No	Descriptor	Applied	Not used
3.16 – 3.21	Option 2 applies to free schools and new provision academies: if used delete option 1		X
3.23	Clause does not apply to academy converters	X	
3.33	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		X
3.34	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies	X	
4.5	Clause applies where the academy has 16-19 provision	X	
4.5A	Clause only applies to free schools		X
4.11	Clause to be included where relevant circumstances apply – and only in relation to academy converters		X
4.16	Clause only applies where a Start-Up period applies to the academy		X
6.1 – 6.4	Clauses do not apply to free schools and new provision academies	X	
7.6A	Clause applies only to a boarding academy/free school		X
7.8	Clause only applies to sponsored academies		X
7.15	Clause applies to free schools and may be applied to new provision academies		X
7.16	Clause applies to free schools and may be applied to new provision academies		X
7.17	Clause applies to free schools and may be applied to new provision academies		X
7.18	Clause applies to free schools and may be applied to new provision academies		X
7.19	Clause applies to free schools and may be applied to new provision academies		X
8.12	Clause only applies to schools which are designated with a Church of England or Roman Catholic character	X	



Please confirm whether additional clauses have been included (e.g. PFI clauses which will be supplied by your project lead if needed)

Descriptor	Clause No.	Applied	Not used

## 1 **ESTABLISHING THE ACADEMY**

### **Introduction to this agreement**

- 1.1. This Agreement is between the Secretary of State for Education (the “**Secretary of State**”) and All Saints’ Academy, Cheltenham (the “**Academy Trust**”), and is an academy agreement as defined by section 1 of the Academies Act 2010.
- 1.2. The Academy Trust is a company limited by guarantee incorporated in England and Wales with company number 06831538. The Academy Trust is a charity and its directors are the Charity Trustees of the Academy Trust.
- 1.3. In order for the Academy Trust to establish and run an independent school in England, according to the provisions of the Academies Act 2010, to be known as All Saints’ Academy(the “**Academy**”), and in order for the Secretary of State to make payments to the Academy Trust, the Academy Trust must meet the requirements in this Agreement.
- 1.4. In this Agreement these capitalised words and expressions will have the following meanings:

“**Academies Financial Handbook**” means the document with that title published by the ESFA and amended from time to time, on behalf of the Secretary of State.

“**Academy Financial Year**” means the year from 1 September to 31 August, or a different period notified in writing by the Secretary of State.

“**Articles**” means the Academy Trust’s articles of association.

“**Business Day**” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or any day which is a bank holiday with the meaning given to that expression in the Banking and Financial Dealings Act 1971.

“**Charity Trustees**” means the directors of the Academy Trust, who are responsible for the general control and management of the administration of the Academy Trust.

“**Chief Inspector**” means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills.

**“Coasting”** has the meaning given by regulations under subsection (3) of section 60B of the Education and Inspections Act 2006 in relation to a school to which that section applies.

**“Control”** means the power of an organisation or individual (‘A’) to ensure that the affairs of another organisation are conducted in accordance with A’s wishes, whether through share ownership or voting power, by agreement, because of powers conferred by articles of association or any other document, or otherwise; and **“Controls”** will be construed accordingly.

**“DfE”** and the expression **“Department”** means the Department for Education or any successor Department which has responsibility for schools”

**“ESFA”** means the Education and Skills Funding Agency.

**“Guidance”** means guidance issued by or on behalf of the Secretary of State, as amended from time to time.

**“Independent School Standards”** means the independent school standards prescribed under section 157 of the Education Act 2002.

**“LA”** means a local authority.

**“Parents”** means parents<sup>1</sup> or guardians.

**“Predecessor School”** means the school which the Academy has replaced, where applicable.

**“Publicly Funded Assets”** means (a) assets or property funded wholly or partly using payments made by or on behalf of the Secretary of State, and (b) publicly funded land as defined in paragraph 22(3) of Schedule 1 to the Academies Act 2010.

**“Pupil Premium”** means an amount equivalent to the pupil premium as defined in the School and Early Years Finance (England) Regulations 2013.

Any reference to **“Secretary of State”** includes a reference to the ESFA acting on the Secretary of State’s behalf.

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<sup>1</sup> Parent has the meaning set out in section 576 of the Education Act 1996

**“Secretary of State’s consent”** means the Secretary of State’s specific, prior written consent, which will not be unreasonably withheld or delayed.

**“SEN”** means Special Educational Needs and the expressions **“special educational needs”** and **“special educational provision”** have the meaning set out in sections 20(1) and 21(2) of the Children and Families Act 2014.

**“Teaching Staff”** means teachers and the principal or head teacher employed at the Academy.

**“Termination Notice”** means a notice sent by the Secretary of State to the Academy Trust, terminating this Agreement on the date specified in the notice.

**“Termination Warning Notice”** means a notice sent by the Secretary of State to the Academy Trust, stating his intention to terminate this Agreement.

- 1.5. The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament.
- 1.6. A reference in this Agreement to any party or body includes its successors.
- 1.7. Any words following the terms ‘include’, ‘including’ or ‘in particular’ are by way of illustration, not limitation.
- 1.8. A reference in this Agreement to land includes any buildings or structures on the land.
- 1.9. References to this Agreement include any and all annexes.
- 1.10. Where any legislation, legal requirement or published guidance is referred to, unless otherwise stated, the following terms should be interpreted as follows:
  - a) the “school” refers to the Academy;
  - b) the “head teacher” may refer to the Academy’s head teacher or principal;
  - c) the Academy Trust will be deemed to be the “responsible authorities”;  
and

- d) references to registered pupils will be treated as references to registered pupils at the Academy.

- 1.11. References in this Agreement to any named legislation, legal requirement or published guidance, should be taken to include any amendment to or replacement of it.
- 1.12. If any questions arise about how this Agreement should be interpreted, the answer will be decided by the Secretary of State, after discussion with the Academy Trust.

### **General Obligations of the Academy Trust**

- 1.13. The Academy Trust must ensure that the Academy meets the requirements in section 1A of the Academies Act 2010.
- 1.14. To the extent that it is compatible with the Academy Trust fulfilling its charitable purpose of advancing education in the United Kingdom for the public benefit, the Academy Trust must ensure that the Academy is at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community.
- 1.15. The Academy Trust must conduct the Academy within the terms and requirements of:
  - a) the Articles;
  - b) any legislation or legal requirement that applies to academies, including the Independent School Standards and legislation about meeting the needs of pupils with SEN and disabilities;
  - c) the Academies Financial Handbook, as stated in clauses 4.6–4.8; and
  - d) this Agreement.
- 1.16. The Academy Trust must, as soon as is reasonable, establish an appropriate mechanism for receiving and managing donations for the purpose of its aims as specified in the Articles.



- 1.17. The Academy Trust must obtain the Secretary of State's consent before applying for the Academy to be designated as a school with religious character. The Secretary of State may at his discretion refuse or consent to the Academy Trust making such an application.
- 1.18. Unless an Academy operated by the Academy Trust is designated as a school with a religious character under the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003, it agrees to be bound by the prohibition against discrimination in section 85 of the Equality Act 2010.
- 1.19. Not used.
- 1.20. The Academy Trust is not required to publish information under this Agreement if to do so would breach its obligations under the Data Protection Act 1998.

### **Academy opening date**

- 1.21. The Academy Trust opened the Academy on 1 September 2011.

### **Governance**

- 1.22. The Academy will be governed by a board comprising the Charity Trustees of the Academy Trust (the "**Board of Charity Trustees**").
- 1.23. The Board of Charity Trustees must have regard to any Guidance on the governance of Academy Trusts.
- 1.24. The Academy Trust must provide to the Secretary of State the names of all new or replacement members of the Academy Trust, stating the date of their appointment and, where applicable, the name of the member they replaced as soon as is practicable and in any event within 14 days of their appointment.
- 1.25. The Academy Trust must not appoint any new or replacement members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.

- 1.26. The Academy Trust must not amend or remove the provisions in its Articles relating to the appointment or election or the resignation or removal of Charity Trustees or members (“the Governance Articles”) without the Secretary of State’s consent.
- 1.27. Before any change to the Governance Articles is proposed the Academy Trust must give notice to the Secretary of State of:-
- a) the proposed amendment or removal; and
  - b) the reason for it.
- 1.28 If the Secretary of State consents to the proposed changes, the Academy Trust shall approve any changes to the Articles as soon as reasonably practicable and provide the Secretary of State with a copy of the amended Articles and the resolution(s) approving them.

## **2. RUNNING OF THE ACADEMY**

### **Length of school day and year**

- 2.1. The length of the school day and year is the responsibility of the Academy Trust.

### **Teachers and staff**

- 2.2. In complying with the Independent School Standards, the Academy Trust must require enhanced Disclosure and Barring Service (“**DBS**”) certificates as appropriate for members of staff, supply staff, members of the Academy Trust, individual Charity Trustees and the chair of the Board of Charity Trustees.
- 2.3. The Academy Trust must promptly submit to the Secretary of State, on request, the information contained in any enhanced DBS certificate that it receives.
- 2.4. Subject to clause 2.5 and section 67 of the Children and Families Act 2014, the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and

prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.

- 2.5. The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by an LA, or are no longer looked after by an LA because of an adoption, special guardianship or child arrangements order, or because they have been adopted from 'state care' outside England and Wales, and in doing so must comply with the law, regulations and guidance that apply to maintained schools. The Academy Trust must ensure the designated person undertakes appropriate training and has regard to any guidance issued by the Secretary of State.
- 2.6. Teachers' pay and conditions of service are the responsibility of the Academy Trust.
- 2.7. The Academy Trust must ensure that all teachers employed at the Academy have access to the Teachers' Pension Scheme and, in so doing, must comply with the requirements of this scheme and with Fair Deal for staff pensions guidance published by HM Treasury.
- 2.8. The Academy Trust must ensure that all affected staff employed in the Academy other than teachers have access to the Local Government Pension Scheme in line with that Scheme's main regulations being the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014. Access to the Scheme must also be in accordance with HM Treasury's published guidance on New Fair Deal which sets out how pensions issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers. These requirements don't apply if an individual chooses to opt out of the Scheme in line with the relevant legal provisions.
- 2.9. Where a member of the Teaching Staff employed at the Academy applies for a teaching post at another Academy, a maintained school, or a further

education institution, the Academy Trust must at the request of the board of governors or Academy Trust of that other educational institution:

- a) advise in writing whether or not, in the previous two years, there have been any formal capability considerations or proceedings for that teacher at the Academy or the Predecessor School;
- b) give written details of the concerns which gave rise to any such consideration of that teacher's capability, the duration of the proceedings and their outcome.

2.9A Not used.

### **Pupils**

2.10. The planned capacity of the Academy is 1150 in the age range 11-19 including a sixth form of 220 places. The Academy will be an all ability inclusive school.

2.11. The Academy Trust must ensure that the Academy meets the needs of individual pupils, including pupils with SEN and disabilities.

2.12. Not used.

2.13. Not used.

### **School meals**

2.14. The Academy Trust must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Academy Trust and as if references to a school maintained by the local authority were to the Academy.

2.15. The Academy Trust must comply with school food standards legislation as if it were a maintained school.

2.16. Where the Academy Trust provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school.

## **Pupil Premium**

2.17. For each Academy Financial Year the Academy Trust must publish, on the Academy's website, information about:

- a) the amount of Pupil Premium allocation that it will receive during the Academy Financial Year;
- b) what it intends to spend its Pupil Premium allocation on;
- c) what it spent its Pupil Premium allocation on in the previous Academy Financial Year; and
- d) the impact of the previous year's Pupil Premium allocation on educational attainment.

2.18. For each Academy Financial Year the Academy Trust must, where applicable, publish, on the Academy's website, information about:

- a) the amount of year 7 literacy and numeracy catch-up premium grant that it will receive during the Academy Financial Year;
- b) what it intends to spend its year 7 literacy and numeracy catch-up premium grant on;
- c) what it spent its year 7 literacy and numeracy catch-up premium grant on in the previous Academy Financial Year; and
- d) the impact of the previous year's year 7 literacy and numeracy catch-up premium grant on educational attainment, and how that effect was assessed.

## **Charging**

2.19. The Academy Trust must comply with sections 402, 450-457 and 459-462 of the Education Act 1996 with regard to public examinations, charging, providing information, inviting voluntary contributions and recovering civil debts, as if the Academy were a maintained school.



- 2.20. There must be no charge for admission to or attendance at the Academy and the Academy will only charge pupils where the law allows maintained schools to charge.
- 2.21. Clause 2.20 does not prevent the Academy Trust receiving funds from an LA or a charity in respect of the admission and attendance of a pupil with SEN to the Academy.
- 2.22. Notwithstanding clause 2.20, the Academy Trust may charge people who are not registered pupils at the Academy for education provided or use of facilities.
- 2.23. **Not used.**
- 2.24. Not used.

## **Admissions**

- 2.25. Subject to clauses 2.30 and 2.31 the Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the DfE (the “Codes”) and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to “admission authorities” will be deemed to be references to the Academy Trust.
- 2.26. Pupils on roll in a Predecessor School which was a maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy.
- 2.27. The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated. If the Academy is a free school, the Academy Trust is not required to participate in coordination for its first intake of pupils.
- 2.28. Not used

2.29. Not used

2.30. Not used

2.31. The Secretary of State may:

- a) direct the Academy Trust to admit a named pupil to the Academy:
  - i. following an application from an LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or
  - ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or
- b) direct the Academy Trust to amend its admission arrangements where they do not comply with the Codes or this Agreement, or are otherwise unlawful.

2.32. The Academy is an Academy designated with a Church of England religious character. The relevant religious authority (i.e. the diocese, or foundation faith body) is Gloucester Diocesan Board of Education

2.33. Not used.

2.34. Not used.

2.35. The Academy Trust must make arrangements to ensure an independent appeals panel is established for the Academy and its clerk and members are trained to act in accordance with the Codes. The Academy Trust must ensure that parents and 'relevant children' (as described in the Codes) are informed of their right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to foundation and voluntary aided schools. The determination of the appeal panel is binding on all parties.

- 2.36. Subject to clause 2.37, the meaning of “**relevant area**” for the purposes of consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.
- 2.37. If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.
- 2.38. The Office of the Schools Adjudicator (“OSA”) will consider objections to the Academy’s admission arrangements (except objections against any agreed derogations from the provisions of the Codes specified in this funding agreement, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy’s admission arrangements, that objections should be submitted to the OSA. The OSA’s determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements to give effect to the Adjudicator’s decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator.

2.39. Not used.

## **Exclusions**

- 2.40. If asked to by an LA, the Academy Trust must enter into an agreement with that LA that has the effect that where:
- a) the Academy admits a pupil who has been permanently excluded from a maintained school, the Academy itself or another Academy with which the LA has a similar agreement; or

- b) the Academy Trust permanently excludes a pupil from the Academy, the arrangements for payment will be the same as if the Academy were a maintained school, under regulations made under section 47 of the School Standards and Framework Act 1998.

## **Curriculum**

- 2.41. The curriculum is the responsibility of the Academy Trust.
- 2.42. The Academy Trust must ensure that the curriculum provided to pupils up to the age of 16 is balanced and broadly based, and includes English, mathematics, science and (subject to the provisions in clause 2.49) religious education.
- 2.43. The Academy Trust must publish on the Academy's website information about its curriculum, including:
  - a) the content of the curriculum;
  - b) its approach to the curriculum;
  - c) where applicable, the names of any phonics or reading schemes in operation for Key Stage 1;
  - d) where applicable, the GCSE options and other Key Stage 4 qualifications, or other future qualifications specified by the Secretary of State, offered by the Academy; and
  - e) how parents (including parents of prospective pupils) can obtain more information about the Academy's curriculum.
- 2.44. The Academy Trust must not allow any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. This clause applies to all subjects taught at the Academy.
- 2.45. The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.

- 2.46. The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.
- 2.47. The Academy Trust must ensure the Academy actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.
- 2.47A The Academy Trust must ensure the Academy promotes principles that support equality of opportunity for all.
- 2.48. The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.
- 2.49. The Academy Trust must comply with section 71(1)-(6) and (8) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to “religious education” and “religious worship” in that section were references to the religious education and religious worship provided by the Academy in accordance with clause 2.50.
- 2.50. Subject to clause 2.49, **where the academy is designated with a religious character** (in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010):
- a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the tenets of the Academy’s specified religion or religious denomination. This is subject to paragraph 4 of Schedule 19 to the School Standards and Framework Act 1998, which applies as if the Academy were a voluntary aided school with a religious character;
  - b) the Academy Trust must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to “the required collective worship” were



references to collective worship in accordance with the tenets and practices of the Academy's specified religion or religious denomination;

- c) the Academy Trust must ensure that the quality of religious education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practices of its specific religion or religious denomination are inspected. The inspection must be conducted by a person chosen by the Academy Trust, and the Academy Trust must ensure that the inspection complies with the statutory provisions and regulations which would apply if the Academy were a foundation or voluntary school designated as having a religious character.

2.51.

- a) Not used. the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule. **[If this clause does not apply, mark clause 2.51 as 'Not used']**

2.52. **Not used.**

2.53.

- 2.54. The Academy Trust must have regard to any Guidance, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and that they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.

2.55. The Academy Trust must ensure that careers guidance is provided at the Academy, in accordance with the requirements on maintained schools in the Education Act 1997.

## **Assessment**

2.56. The Academy Trust must:

- a) ensure that pupils are entered for examinations in line with the requirements on maintained schools in section 402 of the Education Act 1996;
- b) comply with the relevant Guidance, as it applies to maintained schools, to ensure that pupils at the Academy take part in assessments, and in teacher assessments of pupils' performance;
- c) report on assessments as the Secretary of State requires, or provide any information on assessments, on the same basis that maintained schools are required to provide the information;
- d) for all Key Stages, allow monitoring and moderation of the Academy's assessment arrangements as required by the Secretary of State.

2.57. Unless specifically approved in writing by the Secretary of State, the Academy Trust must not use GAG to offer any course of education or training which leads to a qualification, if that qualification is not approved by the Secretary of State for the purpose of section 96 of the Learning and Skills Act 2000.

2.58. Unless informed by the Secretary of State that alternative information must be published, the Academy Trust must ensure that the following information is published on the Academy's website:

- a) where applicable, the Academy's most recent Key Stage 2 results as published by the Secretary of State in the School Performance Tables, broken down as follows:
  - i. "% achieving Level 4 or above in reading, writing and maths";

- ii. “% making expected progress in reading”, “% making expected progress in writing”, and “% making expected progress in maths”;
  - iii. in relation to reading, “% achieving Level 5 or above”;
  - iv. in relation to writing, “% achieving Level 5 or above”; and
  - v. in relation to maths, “% achieving Level 5 or above”;
- b) where applicable, the Academy’s most recent Key Stage 4 results as published by the Secretary of State in the School Performance Tables, broken down as follows:
  - i. “% achieving 5 + A\* - C GCSEs (or equivalent) including English and maths GCSEs”;
  - ii. “% achieving the English Baccalaureate”; and
  - iii. “% of pupils making expected progress”;
- c) information about where and how parents (including parents of prospective pupils) can access the most recent report about the Academy published by the Chief Inspector; and
- d) information about where and how parents (including parents of prospective pupils) can access the School Performance Tables published by the Secretary of State.

2.59. The Secretary of State may direct the Academy to participate in international education surveys under the Education Act 1996, as if it were a maintained school.

### 3. **GRANT FUNDING**

#### **Recurrent Expenditure grants**

3.1. The Secretary of State will pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for the Academy.

- 3.2. **“Recurrent Expenditure”** means any money spent on the establishment, conduct, administration and maintenance of the Academy which does not fall within Capital Expenditure.
- 3.3. In respect of Recurrent Expenditure, the Secretary of State will pay **General Annual Grant (“GAG”)**, and may additionally pay **Earmarked Annual Grant (“EAG”)**. These are two separate and distinct grants.
- 3.4. Except with the Secretary of State’s consent, the Academy Trust must not make commitments to spending which have substantial implications for future grant. No decision by the Academy Trust will commit the Secretary of State to paying any particular amount of grant.

### **Capital Grant**

- 3.5. The Secretary of State may pay a grant (**“Capital Grant”**) to the Academy Trust for the purpose of spending on items of Capital Expenditure.
- 3.6. **“Capital Expenditure”** means expenditure on:
- a) acquiring land and buildings;
  - b) erecting, enlarging, improving or demolishing any building including any fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
  - c) installing electrical, mechanical or other services other than necessary repairs and maintenance due to normal wear and tear;
  - d) buying vehicles;
  - e) installing and equipping premises with furnishings and equipment, other than necessary repairs and maintenance due to normal wear and tear;
  - f) installing and equipping premises with computers, networking for computers, operating software and ICT equipment, other than necessary updates or repairs and maintenance due to normal wear and tear;

- g) providing and equipping premises, including playing fields and other facilities for social activities and physical recreation other than necessary repairs and maintenance due to normal wear and tear;
- h) works of a permanent character other than the purchase or replacement of minor day-to-day items;
- i) any major repairs or replacements which are specified as capital expenditure in any grant letter relating to them;
- j) such other items (whether like or unlike any of the foregoing) of a substantial or enduring nature which the Secretary of State agrees are capital expenditure for the purposes of this Agreement;
- k) professional fees properly and reasonably incurred in connection with the provision of any of the above; and
- l) VAT and other taxes payable on any of the above.

- 3.7. Any Capital Grant funding that may be made available to the Academy Trust will be notified to it by the Secretary of State.
- 3.8. The Academy Trust must spend Capital Grant only on items of Capital Expenditure approved by the Secretary of State and in accordance with conditions specified by the Secretary of State. Further, the Academy Trust must provide evidence that it has obtained all planning and other consents required for any proposed building and infrastructure development to be funded using Capital Grant.
- 3.9. In order to receive payments of Capital Grant, the Academy Trust must provide supporting invoices and certificates in the format specified by the Secretary of State.
- 3.10. The Academy Trust must provide an account of Capital Grant received, and associated spending on Capital Expenditure using Capital Grant, in the Academy Trust's financial statements and any other financial reports or returns that the Secretary of State may require.



3.11. If in its use of Capital Grant the Academy Trust does not comply with this Agreement or any of the conditions specified by the Secretary of State, or the project does not accord with the original specification or has not been completed, the Secretary of State may at his discretion not make any further payments of Capital Grant and require the Academy Trust to repay all or part of the Capital Grant.

### **General Annual Grant (GAG)**

3.12. The Secretary of State will pay GAG to the Academy Trust to cover the Academy's normal running costs or capital expenditure, including:

- a) teachers' salaries and related costs (including pension contributions, full- and part-time teaching staff and payments in respect of seconded teachers);
- b) non-teaching staff salaries and related costs (including pension contributions);
- c) employees' expenses;
- d) buying, maintaining, repairing and replacing teaching and learning materials and other educational equipment, including books and stationery;
- e) buying, maintaining, repairing and replacing other assets including ICT equipment and software, sports equipment and laboratory equipment and materials;
- f) examination fees;
- g) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing and lighting); maintenance of grounds (including boundary fences and walls); insurance; cleaning materials and contract cleaning; water and sewerage; fuel and light (including electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- h) medical equipment and supplies;

- i) staff development (including in-service training);
- j) curriculum development;
- k) the costs of providing school meals for pupils (including the cost of providing free school lunches to pupils who are eligible to receive them), and any discretionary grants to pupils to meet the cost of pupil support, including support for pupils with SEN or disabilities;
- l) administration; and
- m) establishment expenses and other institutional costs.

3.13. GAG for each Academy Financial Year for the Academy will include:

- a) funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and taking account of the number of pupils at the Academy;
- b) funding to cover necessary functions which would be carried out by the relevant LA if the Academy were a maintained school;
- c) payment of any additional specific grants made available to maintained schools, where the Academy meets the criteria for those grants, and at the Secretary of State's discretion; and
- d) funding for any other costs to the Academy which the Secretary of State considers necessary.

3.14. The Academy Trust must use GAG only for maintaining, carrying on, managing and developing the Academy in accordance with this Agreement, except where the Secretary of State has given specific consent for the Academy Trust to use GAG for another charitable purpose.

3.15. In particular, the Academy Trust must not use GAG for:

- a) education and training for adults who are not pupils of the Academy, other than staff professional development and governance training and development;

- b) nursery provision for which parents are charged a fee;
- c) nursery provision to children outside the Academy's age range in clause 2.10;
- d) Children's Centres; or
- e) any additional cost of providing sport and leisure facilities for a purpose not permitted in clause 3.14.

### **Calculation of GAG**

3.16 – 3.19. Not used.

3.20. The Secretary of State will calculate GAG based on the pupil count at the Academy. In order to calculate GAG for the Academy Financial Year in which the Academy opens, the pupil count will be determined on the same basis as that used by the relevant LA for determining the budget of the maintained Predecessor School.

3.21. For Academy Financial Years after that referred to in clause 3.20, the basis of the pupil count for determining GAG will be:

- a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
- b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools.

3.22. The Secretary of State may, at his discretion, adjust the basis of the pupil count to take account of any diseconomies of scale which may affect the Academy if it is operating below the planned capacity in clause 2.10. If such an adjustment is made in any Academy Financial Year, this will not change the basis of the pupil count for calculating the following Academy Financial Year's GAG. If the Secretary of State has indicated that additional grant may be payable in such circumstances, the Academy Trust will bid for this

additional grant based on need and providing appropriate supporting evidence. The Secretary of State may accept or refuse the bid at his discretion.

- 3.23. The Secretary of State may pay a further element of GAG to the Academy Trust during the Start-Up Period or during the period when year groups are present who have transferred from the Predecessor School, in order to allow the Academy to:
- a) purchase a basic stock of teaching and learning materials (including library books, text books, software, stationery, science equipment and equipment for physical education) and other consumable materials; and
  - b) meet the costs associated with the recruitment and induction of additional staff.

After the Start-Up Period these costs will be met through the ordinary GAG.

- 3.24. The Secretary of State recognises that if a Termination Notice or a Termination Warning Notice is served, the intake of new pupils during the notice period may decline and therefore payments based on the number of pupils attending the Academy may be insufficient to meet the Academy's needs. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

### **Earmarked Annual Grant (EAG)**

- 3.25. The Secretary of State may pay EAG to the Academy Trust for specific purposes, agreed between the Secretary of State and the Academy Trust, and described in the relevant funding letter. The Academy Trust must spend EAG only in accordance with that letter.
- 3.26. Where the Academy Trust is seeking a specific EAG for any Academy Financial Year, it must send a letter to the DfE outlining its proposals and the reasons for the request.

### **Arrangements for paying GAG and EAG**

- 3.27. Before each Academy Financial Year, the Secretary of State will notify the Academy Trust of the GAG and EAG amounts which, subject to parliamentary approval, the Secretary of State plans for that Academy Financial Year and how they have been calculated.
- 3.28. The amount of GAG for an Academy Financial Year will be decided annually by the Secretary of State, and notified to the Academy Trust in a funding letter sent before the relevant Academy Financial Year begins (the “**Annual Letter of Funding**”).
- 3.29. Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or as soon as is practicable afterwards.
- 3.30. The Annual Letter of Funding will, as well as stating the grant amounts, set out how they have been calculated. It will not include grants which cannot be calculated in time because there is not enough information, or for other administrative reasons. Any such grants will be notified as soon as practicable.
- 3.31. The Secretary of State will pay GAG in monthly instalments on or before the first day of each month (“the relevant month”), to fund the salaries and other payroll costs of all monthly paid employees and all other costs payable during the relevant month. The detailed arrangements for payment will be set out in the Annual Letter of Funding, or an equivalent.
- 3.32. If GAG or EAG is miscalculated:
- a) because of a mistake by the Secretary of State, which leads to an underpayment to the Academy Trust, the Secretary of State will correct the underpayment in the same or subsequent Academy Financial Years;
  - b) because the Academy Trust provided incorrect information, which leads to an underpayment to the Academy Trust, the Secretary of State may correct the underpayment in the same or subsequent Academy Financial Years;

- c) for any reason which results in an overpayment to the Academy Trust, the Secretary of State may recover any overpaid grant in the same or subsequent Academy Financial Years, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

### **Other relevant funding**

3.33. Not used.

3.34. The Secretary of State may pay the Academy Trust's costs in connection with the transfer of employees from a Predecessor School under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Such payment will be agreed on a case-by-case basis. The Academy Trust must not budget for such a payment unless the Secretary of State confirms in writing that it will be paid.

3.35. The Academy Trust may receive additional funding from an LA under an agreement with that LA for the provision of support for pupils with SEN who require high levels of such support. The Academy Trust must ensure that all support required under that agreement is provided for those pupils.

## **4. FINANCIAL AND ACCOUNTING REQUIREMENTS**

### **General**

4.1. In order for the Secretary of State to provide grant funding to the Academy Trust, the Academy Trust must be fulfilling the financial and reporting requirements in this Agreement.

4.2. In its conduct and operation, the Academy Trust must apply financial and other controls which meet the requirements of regularity, propriety and value for money.

4.3. The Academy Trust must appoint an accounting officer and must notify the Secretary of State of that appointment. The Academy Trust must assign to the accounting officer the responsibilities of the role set out in the Academies Financial Handbook and HM Treasury's publication 'Managing Public Money'.



- 4.4. The Academy Trust must abide by the obligations of, and have regard to the guidance for, charities and charity trustees issued by the Charity Commission and, in particular, the Charity Commission's guidance on 'Protecting Charities from Harm'. Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as reporting to the body or person prescribed as the principal regulator under the Charities Act 2011.
- 4.5. The Academy Trust must comply with the 16 to 19 Funding Guidance published by the Secretary of State, in respect of its provision for pupils above compulsory school age until the academic year in which they reach the age of 19.
- 4.5A Not used.

### **Application of the Academies Financial Handbook**

- 4.6. In relation to the use of grant paid to the Academy Trust by the Secretary of State, the Academy Trust must follow the requirements of, and have regard to the guidance in, the Academies Financial Handbook.
- 4.7. The Academy Trust must have adequate insurance cover or opt in to the Department's arrangements as set out in the Academies Financial Handbook.
- 4.8. The Academy Trust must submit information about its finances to the Secretary of State in accordance with the Academies Financial Handbook, or as otherwise specified by the Secretary of State.

### **Budgeting for funds**

- 4.9. The Academy Trust must balance its budget from each Academy Financial Year to the next. For the avoidance of doubt, this does not prevent the Academy Trust from:
- a) subject to clause 4.14, carrying a surplus from one Academy Financial Year to the next; or
  - b) carrying forward from previous Academy Financial Years sufficient cumulative surpluses on grants from the Secretary of State to meet an

in-year deficit on such grants in a subsequent financial year, in accordance with clauses 4.14-4.17; or

- c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that the Academy balances its overall budget from each Academy Financial Year to the next.

4.10. The Academy Trust may spend or accumulate funds from private sources or public sources, other than grants from the Secretary of State. Any surplus from private or public sources other than grants from the Secretary of State must be separately identified in the Academy Trust's accounts.

4.11. Not used.

4.12. The Academy Trust's budget must be approved for each Academy Financial Year by the Board of Charity Trustees.

4.13. The approved budget must be submitted to the Secretary of State in a form, and by a date, to be notified by the Secretary of State.

#### **Carrying forward of funds**

4.14. At the end of any Academy Financial Year the Academy Trust may carry forward unspent GAG from previous Academy Financial Years without limit (unless a limit is specified in the Academies Financial Handbook, or otherwise specified in writing by the Secretary of State, in which case that limit will apply).

4.15. The Academy Trust must use any GAG carried forward only for the purposes of GAG as set out in this Agreement, or otherwise as specified in the Academies Financial Handbook or in writing by the Secretary of State.

4.16. Not used.

4.17. Any additional grant made in accordance with clause 3.24, for a period after the Secretary of State has served a Termination Notice or a Termination Warning Notice, may be carried forward without limitation or deduction until

the circumstances set out in clause 3.24 cease to apply, or the Academy closes.

- 4.18. Any unspent grant not allowed to be carried forward under clauses 4.14-4.17 may be taken into account in the payment of subsequent grant.

### **Annual accounts and audit**

- 4.19. The Academy Trust must prepare and file with Companies House the annual reports and accounts required by the Companies Act 2006.
- 4.20. In addition, the Academy Trust must prepare its annual reports and accounts for each Academy Financial Year:
- a) in accordance with the Charity Commission's 'Accounting and Reporting by Charities: Statement of Recommended Practice', as if the Academy Trust were a registered charity; and
  - b) additionally as the Secretary of State directs.
- 4.21. The Academy Trust's accounts must be audited annually by independent auditors appointed in line with the Academies Financial Handbook.
- 4.22. The accounts must carry an audit report stating whether, in the auditors' opinion, the accounts show a true and fair view of the Academy Trust's affairs. The accounts must also be accompanied by such other audit reports, relating to the use of grants and other matters, as the Secretary of State directs.
- 4.23. The Academy Trust's annual report must include the names of all members of the Academy Trust who served during the year.
- 4.24. The Academy Trust's annual reports and accounts, and the auditor's reports, must be submitted to the Secretary of State by 31 December each Academy Financial Year, or as otherwise specified by the Secretary of State.
- 4.25. The Academy Trust must publish on its website its annual reports and accounts, current memorandum of association, Articles and Funding Agreement and the names of its Charity Trustees and members. The

Secretary of State may also publish the Academy Trust's annual reports and accounts, and the audit report, as he sees fit.

### **Keeping financial records**

- 4.26. The Academy Trust must keep proper accounting records. Statements of income and expenditure, statements of cash flow and balance sheets must be produced in such form and frequency as the Secretary of State directs.

### **Access to financial records**

- 4.27. The books of accounts and all relevant records, files and reports of the Academy Trust, including those relating to financial controls, must be open at all reasonable times to officials of the DfE and the National Audit Office, and to their agents and contractors, for inspection or carrying out value for money assessments. The Academy Trust must give those officials and contractors reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.
- 4.28. The Secretary of State may, at his expense, instruct auditors to report to him on the adequacy and effectiveness of the Academy Trust's accounting systems and internal controls to standards determined by the Secretary of State, and to make recommendations for improving the Academy Trust's financial management.

### **Acquiring and disposing of Publicly Funded Assets**

- 4.29. In relation to Publicly Funded Assets, the Academy Trust must not, without the Secretary of State's consent:
- a) acquire or dispose of freehold land;
  - b) take up or grant a lease of land;
  - c) dispose of any other class of capital asset,
- except as expressly permitted in the Academies Financial Handbook, and subject to Part 3 of Schedule 1 to the Academies Act 2010.

- 4.30. The Academy Trust must give the Secretary of State 30 days' notice of its intention to take any of the actions in clause 4.29 (a) – (c) regardless of whether the Secretary of State's consent is required.

#### **Retaining proceeds from the disposal of capital assets**

- 4.31. Except as permitted in the Academies Financial Handbook, if the Academy Trust sells capital assets which were acquired or enhanced wholly or partly using payments made by or on behalf of HM Government, the Academy Trust must pay to the Secretary of State, at his request, an amount of the sale proceeds equivalent to the proportion of the original cost of the acquisition or enhancement which was met by or on behalf of HM Government.
- 4.32. If the Academy Trust sells a capital asset which was transferred to it for no or nominal consideration from an LA, the Predecessor School or the Predecessor School's foundation, the Academy Trust must, if required by the Secretary of State, pay all or part of the sale proceeds to the LA or to the Secretary of State, taking into account the amount of the proceeds to be reinvested by the Academy Trust.

#### **Transactions outside the usual planned range**

- 4.33. In relation to Publicly Funded Assets, the Academy Trust must not, without the Secretary of State's consent:
- a) give any guarantees, indemnities or letters of comfort, except such as are given in normal contractual relations; or
  - b) write off any debts or liabilities owed to it; or
  - c) offer to make any special payments as defined in HM Treasury's publication 'Managing Public Money' (including ex gratia payments, staff severance payments and compensation payments)
- if the value of those transactions would be above any threshold specified in the Academies Financial Handbook.
- 4.34. The Academy Trust must give the Secretary of State 30 days' notice (or such shorter period as the Secretary of State may agree) of its intention to take any

of the actions in clause 4.33 (a) – (c) regardless of whether the Secretary of State's consent is required.

- 4.35. The Academy Trust must promptly notify the Secretary of State of any loss arising from suspected theft or fraud in line with the requirements in the Academies Financial Handbook, or otherwise specified by the Secretary of State.

## **Borrowing**

- 4.36. Except as permitted in the Academies Financial Handbook, the Academy Trust must not borrow against Publicly Funded Assets, or so as to put Publicly Funded Assets at risk, without the Secretary of State's consent.

## **5. LAND CLAUSES**

**“Land”** means the land at All Saints' Academy, Blaisdon Way, Cheltenham, Gloucestershire GL51 0WH

being the land registered with title number GR421753 and demised by the Lease.

**“Lease”** means the lease or other occupational agreement between the Academy Trust and a third party (the **“Landlord”**) under which the Academy Trust derives title to the Land.

**“Property Notice”** means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Landlord) which materially affects the Academy Trust's ability to use the Land for the purposes of the Academy.

## **Restrictions on Land transfer**

- 5.1. The Academy Trust must:

- a) within 28 days of the signing of this Agreement in circumstances where the Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Land to the Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the **“Restriction”**) to be entered in the proprietorship register for the Land:



*No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT;*

- b) take any further steps reasonably required to ensure that the Restriction is entered on the proprietorship register;
- c) promptly confirm to the Secretary of State when the Restriction has been registered;
- d) if it has not registered the Restriction, permit the Secretary of State to do so in its place; and
- e) not, without the Secretary of State's consent, apply to disapply, modify, cancel or remove the Restriction, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

### **Obligations of the Academy Trust**

- 5.2. The Academy Trust must keep the Land clean and tidy and make good any damage or deterioration to the Land. The Academy Trust must not do anything to lessen the value or marketability of the Land without the Secretary of State's consent.
- 5.3. The Academy Trust must comply with the Lease and promptly enforce its rights against the Landlord.
- 5.4. The Academy Trust must not, without the Secretary of State's consent:
  - a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;
  - b) grant any consent or licence; or
  - c) create or allow any encumbrance; or
  - d) part with or share possession or occupation; or

- e) enter into any onerous or restrictive obligations,
- in respect of all or part of the Land.

### **Option**

- 5.5. The Academy Trust grants and the Secretary of State accepts an option (the “**Option**”) to acquire the Land at nil consideration. The Secretary of State may exercise the Option in writing on termination of this Agreement. If the Option is exercised, completion will take place 28 days after the exercise date in accordance with the Law Society’s Standard Conditions of Sale for Commercial Property in force at that date.

### **Option notice**

- 5.6. The Academy Trust:
- a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the “**Option Notice**”) to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;
  - b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;
  - c) must not, without the Secretary of State’s consent, apply to disapply, modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust, and
  - d) must, in the case of previously unregistered land, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has been completed. If the Secretary of State

considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

### **Property notices**

5.7. If the Academy Trust receives a Property Notice, it must:

- a) send a copy of it to the Secretary of State within 14 days, stating how the Academy Trust intends to respond to it;
- b) promptly give the Secretary of State all the information he asks for about it;
- c) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to comply with it, and
- d) use its best endeavours to help the Secretary of State in connection with it.

### **Breach of Lease**

5.8. If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.

5.9. After notifying the Secretary of State under clause 5.8, the Academy Trust must:

- a) promptly give the Secretary of State all the information he asks for about the breach;
- b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and
- c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

### **Sharing the Land**

5.10 Where:

- a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; and
- b) the Secretary of State then considers that not all the Land is needed for the operation of the Academy at planned capacity,

the Secretary of State must consult with the Academy Trust to determine whether part of the Land could be demised or sublet to another Academy Trust, as the Secretary of State considers appropriate, for the purpose of that Academy Trust establishing and maintaining an educational institution on the Land.

5.11 To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or sublet in accordance with clause 5.10, the Academy Trust must use its best endeavours to procure either the approval of the Landlord or any necessary amendments to the Lease in order to enable it to share occupation of the Land with the incoming Academy trust and to provide the incoming Academy Trust with security of tenure over the Land occupied by it, and shall enter into any legal arrangements which the Secretary of State requires for this purpose. The Secretary of State shall meet the necessary and reasonable costs incurred by the Academy Trust in connection with this clause.

5.12 For the purposes of clause 5.10:

- a) a **basic need** will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;
- b) a **parental need** will arise when the DfE is actually aware of an additional demand for pupil places in the area where the Academy is situated, following representations from parents in that area; and
- c) **planned capacity** has the meaning given in clause 2.10.

6. **COMPLAINTS**

- 6.1. If a complaint is made about matters arising wholly or partly before the Academy opened, and all or part of that complaint was investigated by the Local Government Ombudsman under Part III of the Local Government Act 1974 (**"Part III"**), or could have been investigated under Part III if the Predecessor School had remained a maintained school, the Academy Trust:
- a) must abide by the provisions of Part III as if the Academy were a maintained school;
  - b) agrees that the Secretary of State will have the power to investigate the subject of the complaint as if it had taken place after the Academy opened; and
  - c) must act in accordance with any recommendation from the Secretary of State as if that recommendation had been made under Part III and the Academy were a maintained school.
- 6.2. If the Secretary of State could have given an order or a direction under sections 496 or 497 of the Education Act 1996 to the governing body of the Predecessor School relating to matters occurring within the 12 months immediately before the Academy opened, the Academy Trust:
- a) agrees that the Secretary of State may give orders or directions to the Academy Trust as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school; and
  - b) must act in accordance with any such order or direction from the Secretary of State.
- 6.3. If a complaint made to the governing body of the Predecessor School has not been fully investigated when the Academy opens, the Academy Trust must continue to investigate that complaint in accordance with the complaints procedures established by that governing body.
- 6.4. If a complaint is made to the Academy Trust about matters arising wholly or partly during the 12 months before the Academy opened, the Academy Trust

agrees to investigate that complaint as if the matter complained of had taken place after the Academy opened.

## **7. TERMINATION**

### **Termination by either party**

7.1. Either party may give at least seven Academy Financial Years' notice to terminate this Agreement. Such termination would take effect on 31 August of the relevant year.

### **Termination Warning Notice**

7.2. The Secretary of State may serve a Termination Warning Notice where he considers that:

- a) the Academy Trust has breached the provisions of this Agreement; or
- b) the standards of performance of pupils at the Academy are unacceptably low; or
- c) there has been a serious breakdown in the way the Academy is managed or governed; or
- d) the safety of pupils or staff is threatened, including by a breakdown of discipline; or
- e) the Academy is coasting provided he has notified the Academy Trust that it is coasting.

7.3. A Termination Warning Notice served under clause 7.2 will specify:

- a) the action the Academy Trust must take;
- b) the date by which the action must be completed; and
- c) the date by which the Academy Trust must make any representations, or confirm that it agrees to undertake the specified action.

7.4. The Secretary of State will consider any representations from the Academy Trust which he receives by the date specified in the Termination Warning



Notice. The Secretary of State may amend the Termination Warning Notice to specify further action which the Academy Trust must take, and the date by which it must be completed.

- 7.5. If the Secretary of State considers that the Academy Trust has not responded to the Termination Warning Notice as specified under clause 7.3(c), or has not completed the action required in the Termination Warning Notice under clauses 7.3(a) and (b) (and any further action specified under clause 7.4) he may serve a Termination Notice.

### **Termination by the Secretary of State after inspection**

- 7.6. If the Chief Inspector gives notice to the Academy Trust that:

- a) special measures are required to be taken in relation to the Academy;  
or
- b) the Academy requires significant improvement,

the Secretary of State may serve a Termination Warning Notice, specifying the date by which the Academy Trust must make any representations.

- 7.6A Not used.

- 7.7. If the Secretary of State has served a Termination Warning Notice under clause 7.6 and:

- a) has not received any representations from the Academy Trust by the date specified in the notice; or
- b) having considered the representations made by the Academy Trust remains satisfied that this Agreement should be terminated,

he may serve a Termination Notice.

- 7.8. Not used.

### **Termination by the Secretary of State**

- 7.9. If the Secretary of State has determined that the Academy will be removed from the Register of Independent Schools and no appeal against the determination is pending, he may serve a Termination Notice.
- 7.10. The Secretary of State may serve a Termination Notice if any of the following events occurs, or if he considers that there is a serious risk that any of them may occur:
- a) the Academy Trust calls a formal or informal meeting of its creditors or enters into any formal or informal composition or arrangement with its creditors; or
  - b) the Academy Trust proposes a voluntary arrangement within section 1 of the Insolvency Act 1986; or
  - c) the Academy Trust cannot pay its debts within the meaning of section 123 of the Insolvency Act 1986 with, for the purposes of this clause, section 123 (1)(a) of this Act having an effect as if £10,000 were substituted for £750. The Academy Trust will not be considered unable to pay its debts for the purposes of this clause if it is contesting any such demand in good faith ; or
  - d) the Academy Trust has a receiver and manager (except those appointed by the Charity Commission under the Charities Act 2011), administrator or administrative receiver appointed over all or part of its undertakings, assets or income; or
  - e) any distraint, execution or other process is levied or enforced on any of the Academy Trust's property and is not paid out, withdrawn or discharged within 15 business days; or
  - f) the Academy Trust has passed a resolution for its winding up; or
  - g) an order is made for the winding up or administration of the Academy Trust.

7.11. The Academy Trust must promptly notify the Secretary of State, with an explanation of the circumstances, after receiving any petition which may result in an order for its winding up or administration.

7.12. If

- a) Any Charity Trustee or member of the Academy Trust refuses to consent to any checks required under this Agreement, or as otherwise requested by the Secretary of State; or
- b) The Secretary of State determines that any Charity Trustee or member of the Academy Trust is unsuitable,

the Secretary of State may:

- i. direct the Academy Trust to ensure that the Charity Trustee or member resigns or is removed within 42 days, failing which the Secretary of State may serve a Termination Notice; or
- ii. serve a Termination Notice.

7.13. For the purposes of clause 7.12 a Charity Trustee or member of the Academy Trust will be “unsuitable” if that Charity Trustee or member:

- a) has been convicted of an offence;
- b) has been given a caution in respect of an offence;
- c) is subject to a relevant finding in respect of an offence; or
- d) has engaged in relevant conduct,

as a result of which, the Secretary of State considers that that Charity Trustee or member is unsuitable to take part in the management of the Academy.

7.14. For the purposes of clause 7.13:

- a) a Charity Trustee or member of the Academy Trust will be subject to a “relevant finding” in respect of an offence if:

- i. that Charity Trustee or member has been found not guilty of the offence by reason of insanity;
  - ii. that Charity Trustee or member has been found to be under a disability and to have done the act charged against them in respect of the offence; or
  - iii. a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.
- b) “relevant conduct” is conduct by a Charity Trustee or member of the Academy Trust which is:
  - i. aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or
  - ii. found to be in breach of professional standards by a professional body; or
  - iii. so inappropriate that, in the opinion of the Secretary of State, it makes that Charity Trustee or member unsuitable to take part in the management of the Academy.

7.15. Not used.

7.16. Not used.

7.17. Not used.

7.18. Not used.

7.19. No used.

### **Change of Control**

7.20. The Secretary of State may at any time, subject to clause 7.21, serve a Termination Notice if there is a change:

- a) in the Control of the Academy Trust; or
  - b) in the Control of a legal entity that Controls the Academy Trust.
- 7.21. Where a person ('P') is a member or director of a body corporate (as a corporation sole or otherwise) by virtue of an office, no change of Control arises merely by P's successor becoming a member or director in P's place.
- 7.22. The Academy Trust must promptly notify the Secretary of State if there is a proposed or actual change of Control of the Academy Trust, or of a legal entity that Controls the Academy Trust.
- 7.23. When notifying the Secretary of State under clause 7.22, the Academy Trust must seek his agreement that, if he is satisfied with the change of Control, he will not exercise his right to terminate this Agreement under clause 7.20.

#### **Funding and admission during notice period**

- 7.24. If the Secretary of State serves a Termination Notice under clause 7.1, the Academy Trust may continue during the notice period to admit pupils to the Academy, and to receive GAG and EAG, in accordance with this Agreement.
- 7.25. If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 7.1, the Academy Trust may continue during the notice period to admit pupils to the Academy (unless the Secretary of State specifies otherwise), and to receive GAG and EAG, in accordance with this Agreement.

#### **Effect of Termination**

- 7.26. If this Agreement is terminated, the Academy will cease to be an Academy within the meaning of sections 1 and 1A of the Academies Act 2010.
- 7.27. Subject to clauses 7.28 and 7.29, if the Secretary of State terminates this Agreement under clause 7.1, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 7.1, he may at his discretion indemnify or compensate the Academy Trust.

- 7.28. The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to him by the Academy Trust, and will be paid as and when the Secretary of State considers appropriate.
- 7.29. The categories of expenditure incurred by the Academy Trust in consequence of termination, for which the Secretary of State may indemnify the Academy Trust under clauses 7.27, may include:
- a) staff compensation and redundancy payments;
  - b) compensation payments in respect of broken contracts;
  - c) expenses of disposing of assets or adapting them for other purposes;
  - d) legal and other professional fees; and
  - e) dissolution expenses.
- 7.30. If this Agreement is terminated, and the Academy Trust owns capital assets which have been partly or wholly funded by HM Government, the Academy Trust must, as soon as possible after the termination date:
- a) transfer a proportion of those capital assets, equal to the proportion of the original financial contribution made by HM Government, to a nominee of the Secretary of State to use for educational purposes; or
  - b) if the Secretary of State directs that a transfer under clause 7.30(a) is not required, pay to the Secretary of State at the termination date (or, by agreement with the Secretary of State, at the date of their subsequent disposal) a sum equivalent to the proportion of the original financial contribution made by HM Government.
- 7.31. The Secretary of State may:
- a) waive all or part of the repayment due under sub-clause 7.30(b) if the Academy Trust obtains his permission to invest the sale proceeds for its charitable purposes; or



- b) direct the Academy Trust to pay all or part of the sale proceeds to the relevant LA.

## **8. OTHER CONTRACTUAL ARRANGEMENTS**

### **Information**

- 8.1. The Academy Trust must promptly provide to the Secretary of State any information that he requests about the Academy Trust or the Academy, which he regards as necessary to fulfil his role and responsibilities.
- 8.2. The Secretary of State will give the Academy Trust any information it reasonably requires of him for the running of the Academy.

### **Access by the Secretary of State's Officers**

- 8.3. The Academy Trust must allow DfE officials to enter the Academy at any reasonable time. All records, files and reports relating to the running of the Academy must be available to them at any reasonable time. Two DfE officials may attend and speak at any meetings of the Board of Charity Trustees or any other meetings of Charity Trustees of the Academy Trust, but will withdraw from any discussion of the Academy's or the Academy Trust's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State.
- 8.4. The following documents must be provided to the Secretary of State or any person nominated by the Secretary of State on request:
  - a) the agenda for every meeting of the Board of Charity Trustees or any committee to which it delegates any of its functions;
  - b) the draft minutes of every such meeting, if they have been approved by the chairman of that meeting;
  - c) the signed minutes of every such meeting; and
  - d) any report, document or other paper considered at any such meeting.
- 8.5. The Academy Trust may exclude from items provided under clause 8.4 any content relating to:

- a) a named teacher or other person employed, or proposed to be employed, at the Academy;
- b) a named pupil at, or candidate for admission to, the Academy; and
- c) any matter which, the Academy Trust reasonably believes should remain confidential.

## Notices

8.6. A notice or communication to a party in connection with this Agreement:

- a) must be in writing (excluding email, except where agreed in advance) and in English;
- b) must be delivered by hand or sent by pre-paid first-class post or other next working day delivery service;
- c) will be deemed to have been received:
  - i. if delivered by hand, at the time when a delivery receipt is signed or when the notice is left at the address in paragraph (d), or
  - ii. if posted, at 9.00 am on the second working day after posting; and
- d) must be sent to the party for the attention of the contact and at the address listed as follows (or to a different contact or address previously notified to the sending party, the change taking effect five business days after deemed receipt of the notice):

Name of party	Position of contact	Address
Secretary of State	Head of Academies Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
Academy Trust	Chair of Board of Charity Trustees	All Saints' Academy, Blaidon Way,

Name of party	Position of contact	Address
		Cheltenham Gloucestershire GL51 OWH

## General provisions

- 8.7. The Academy Trust cannot assign this Agreement.
- 8.8. Failure to exercise, or a delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate it), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.
- 8.9. Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties to this Agreement existing at termination.
- 8.10. This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute a duplicate original, but all of which will together constitute the same agreement.
- 8.11. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.
- 8.12. The Secretary of State agrees that this Agreement shall be interpreted in a way which is compatible with the provisions of clauses 20A-F and 23A-H (if used) of the Church Supplemental Agreement if required to be put in place by the Gloucester Diocesan Board of Education.



## **ANNEXES**

### **9. ADMISSION OF CHILDREN AND YOUNG PEOPLE WITH EDUCATION, HEALTH AND CARE PLANS**

“**EHC plan**” means an Education, Health and Care plan made under section 37 of the Children and Families Act 2014.

9.1. Except as set out in clause 10 below, the Children and Families Act 2014 imposes duties directly on Academies in respect of pupils with special educational needs, including the admission of pupils with EHC plans. If an Academy Trust considers that a LA should not have named the Academy in an EHC plan, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Academy Trust must admit the pupil if such a determination is pending. The Secretary of State’s determination as to whether the LA acted unreasonably will be final, subject to any right of appeal which a parent of the pupil may have to the First Tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

### **10. ADMISSION OF CHILDREN WITH A STATEMENT OF SPECIAL EDUCATIONAL NEEDS**

(Clauses 10.1-10.7 only apply where the pupil has a statement of special educational needs (SEN) rather than an EHC plan and where they therefore continue to be subject to the relevant provisions of the Education Act 1996. EHC plans are replacing statements of SEN but although all statements of SEN should have been converted to an EHC plan by the 1 April 2018 this clause is retained to protect pupils who still have a statement of special education need after this date. The detail on the drafting of a statement below is retained to protect pupils in exceptional circumstances.)

“**Statement of SEN**” means a statement made under section 324 of the Education Act 1996.

10.1. The Academy Trust must admit all children with a Statement of SEN naming the Academy.

- 10.2. The Academy Trust must have regard to the Special Educational Needs Code of practice 2001 when dealing with statements of SEN.
- 10.3. Where the LA sends the Academy Trust a draft statement with a proposal that the Academy is named in the final statement, the Academy Trust must respond within 15 working days unless the time period falls within a school holiday that is longer than two weeks in which case the Academy Trust should respond within 15 working days of the end of the school holiday.
- 10.4. In its response the Academy Trust must either:
- a. consent to being named in the final statement or
  - b. explain why it believes that admitting the child would be incompatible with the provision of efficient education for other children and the efficient use of resources, including why no reasonable steps could secure compatibility. In doing so the Academy Trust must have regard to the relevant legislation and Code of Practice. If the LA does not agree with the Academy Trust's response, and names the Academy in the child's Statement of SEN, the Academy Trust must admit the child to the school as specified in the statement or otherwise by the LA. The final decision as to whether to name the Academy falls to the LA.
- 10.5. If the Academy Trust considers that the LA should not have named the Academy in the statement of SEN, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Academy Trust must admit the pupil if such a determination is pending. The Secretary of State's determination will be final, subject only to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.
- 10.6. If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber, either for or against the naming of the Academy in the child's statement, then the Tribunal's decision will be binding, even if it is different from that of the Secretary of State.



- 10.7. Where it has been finally determined that the Academy be named in a child's Statement of SEN, the Academy Trust must admit the child to the Academy, notwithstanding any other admissions requirements in this Agreement
- 10.8. Clauses 10.1 to 10.7 only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.

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